IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ELECTION PETITION NO.7 OF 2004

Kuldeep Pednekar, Indian
Inhabitant residing at Post
Kunakeshwar, Talewadi,
Taluka Deogad, District Sindhudurg. ...Petitioner

VERSUS

1. Ajit Pandurang Gogate,
   Indian inhabitant, residing at
   Post Jamsande, Taluka Deogad,
   Dist Sindhudurg.

2. Sudhakar Shantaram Mangaokar,
   Indian Inhabitant, residing at 533,
   Bharad Malwan, Taluka Malwan,
   Dist. Sindhudurg.

3. Daulat Atmaram Joshi,
   Indian Inhabitant, residing at
   Munage, Adbandar, Taluka Deogad,
   Dist. Sindhudurg.

4. Mahesh Vithoba Juwatkar,
   Indian Inhabitant, residing at
   Palye, Wada, Taluka Deogad,
   Dist. Sindhudurg.

5. Mahendra Natekar,
   Indian Inhabitant, residing at
   Kalmath, Guravwadi, Taluka
   Kankavali, Dist. Sindhudurg.

6.Sunil Sarvankar, Indian Inhabitant,
  residing at Wanewade, Taluka
  Deogad, Dist. Sindhudurg. ...Respondents

.....

Mr.V.T.Tulpule with Ms.Nitya Mehta with
Mr.Pankaj Kowli i/b Nitya Sunil & Associates
for Petitioner.

Mr.Balkrishna D.Joshi with Ms.Pushpa Diwan with Mrs.Anjali Helekar for Respondent No.1.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 3, 2006.

ORAL JUDGMENT :

1. This Petition is filed for declaration that the election of the Respondent No.1 as candidate from '04' Deogad Assembly Constituency in the general election of the Maharashtra Legislative Assembly held on 13th October 2004 as Official candidate of the Bhartiya Janata Party (hereinafter referred to as 'BJP') representing the alliance of Shivsena-BJP, be declared illegal, null and void.

2. The notice in Form No.1 declaring the Election programme was published on September 15, 2004. The date of filing nomination was from 15th September 2004 till 22nd September 2004. The scrutiny of nomination was to be undertaken on 23rd September 2004 and the list of valid candidates after due scrutiny was to be published thereafter.

Under the said Notification, date of withdrawal of nomination was 25th September 2004. On that date, besides the Petitioner, the six Respondents herein remained in the fray for polling to be held on 13th October 2004 between 7.00 a.m. to 5.00 p.m. The counting of votes in terms of Notification was held on 16th October 2004 when the Respondent No.1 was declared as elected candidate from the said Constituency by the Returning Officer. The total votes polled as per the results declared by the Returning Officer are stated to be 87,789. The Petitioner secured 41,312 votes; whereas, the Respondent No.1 who was declared as Returned Candidate secured 42,384, elected by margin of 1072 votes. The other five candidates secured nominal votes ranging from 262 to 1,824.

3. The present Election Petition has been filed by the defeated candidate in this Court on 30th November 2004. The Petitioner was the official candidate of the ‘Nationalist Congress Party’ (NCP) repersenting alliance of ‘Congress (I) - NCP - RPI Front". By this Petition, the Petitioner challenges the election of the

Respondent No.1 on the various grounds, amongst others, corrupt practice. After notice was issued to the Respondents, the Respondent No.1 who is the returned candidate, filed written statement. In the written statement, preliminary issue has been raised that Election Petition deserves to be dismissed within the meaning of Section 86(1) of the Representation of the People Act, 1950 (hereinafter referred to as 'the Act'). In view of the pleadings filed, by order dated December 21, 2005, I formulated two issues being issues of law to be decided as preliminary issues. The same read thus:

> "(1) Whether the Election Petition deserves to be dismissed within the meaning of Section 86(1) of the Act, as the copy of the Election Petition served on the contesting Respondent is not a true copy thereof?
>
> (2) Whether averments in the Election Petition are devoid of material facts and particulars, as a result of which, fails to disclose cause of action on account of which, same deserves to be dismissed within the meaning of Section 86(1) read with Section 83 and 81 of the Act?

4. I propose to deal with the second issue

first. The question is: whether the Election Petition as presented, will have to be dismissed within the meaning of Section 86(1) of the Act, as the same is devoid of material facts and particulars and fails to disclose cause of action? The attempt of the Petitioner on the other hand is to persuade me to take the view that the grievance of the Respondent No.1 even if accepted as it is, it would, at best, mean that the Petition lacks details or particulars in relation to the allegations on the basis of which the election of Respondent No.1 is to be declared as illegal, null and void; that defect can be cured by the Petitioner with the permission of the Court consistent with the provision in Section 86(5) of the Act. It was argued that even if the Petition does not contain some material facts in relation to the allegations on the basis of which the election will have to be voided, that cannot be the basis to dismiss the Election Petition by taking recourse to provisions of Section 86(1) of the Act. I shall straightaway deal with these submissions.

5. The scheme of Section 86(1) of the Act

mandates that the election petition shall be dismissed by the Court, if it does not comply with the provisions of Section 81 or Section 82 or Section 117. In other words, Section 86(1) obligates the Court to dismiss the Election Petition on account of non-compliance of Section 81 of the Act. Sub-section (1) of Section 81 of the Act provides for filing of Election Petition within specified time. This provision is not invoked by the Respondent No.1 in the present case. Similarly, neither ground of non-compliance of Section 82 or Section 117 is pressed by the Respondent No.1. That leaves us with the non-compliance of Section 81(3) as the ground for dismissing the Petition under Section 86 of the Act. That provision provides that every "Election Petition" shall be accompanied by as many copies thereof as there are Respondents mentioned in the Petition and every such copy shall be attested by the Petitioner under his own signature to be a true copy of the Petition. Indeed, Section 86(1) makes no reference to the situation that if the election petition is devoid of material facts, the same can be dismissed. However, by now, it is well

established that if the Election Petition lacks material facts on which the Petitioner relies, the same ought to be dismissed in exercise of powers under Section 86(1) of the Act read with provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'). That is so because Section 81 refers to "an election petition". Section 83 provides for the contents of an Election Petition. If the Petition does not conform to the requirements of Section 83, in particular, sub-section (1)(a) namely, lacks material facts, in that event, the Petition as filed cannot be allowed to proceed for want of cause of action; for it is not open to the election petitioner to improve upon that deficiency after the expiry of the period of limitation specified in sub-section (1) of Section 81 of the Act. In other words, even though Section 86(1) makes no reference to Section 83(1)(a) as such, even so, the Election Petition, if it fails to set forth "all the material facts" on which the Petitioner relies so as to disclose the cause of action, such Petition will have to be thrown out at the threshold. That power is not only to be

exercised with reference to Section 86(1) of the Act, but also flows from provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'), which obligates the Court to throw out the Petition at the threshold if the same does not disclose cause of action. There are catena of decisions of the Apex Court to fortify the above legal position. It will be useful to refer to the statement of law expounded in the decision of the Apex Court in **Azhar Hussain vs. Rajiv Gandhi reported in AIR 1986 SC 1253**, which restates the legal position that the Election Petition ought to be dismissed at the threshold for non-compliance of provisions of Section 83 for failure to incorporate in the Petition all the material facts and particulars relating to alleged corrupt practices to disclose the cause of action, by invoking powers under the Code; further, it is settled law that omission of a single material fact would lead to an incomplete cause of action relating to charge of corrupt practice and such election petition is not an election petition at all.

6. In another decision of the Apex Court in the case of **Lalit Kishore Chaturvedi vs. Jagdish Prasad Thada & Ors. reported in AIR 1990 SC 1731**, it is observed that if the Petition does not conform to the requirements of Section 83, the Petition is liable to be dismissed under Order VII Rule 11 of the Code. It is not necessary to multiply authorities to buttress the above legal position. The question is: whether the Petition as filed discloses complete cause of action? It is well established that bundle of facts constitute cause of action. It is also well established that there is distinction between "material facts" and "particulars". Counsel for the Petitioner has rightly placed reliance on the decision of the Apex Court in the case of **Sardar Harcharan Singh Brar vs. Sukh Darshan Singh & Ors. reported in 2004 (7) Supreme 721**, which has restated the legal position culled out from several decisions on the point. In Para 11 of the said reported decision, reference is made to earlier three Judges' Bench decision in **Mahindra Pal's case reported in 2000 (1) SCC 261**. The extract from that Judgment is reproduced in Para 11. It is observed by the Apex

Court therein that whether in an election petition, a particular fact is material or not and as such required to be pleaded is a question which depends upon the nature of the charge levelled and the facts and circumstances of each case. The Court then went on to note the distinction between "material facts" and "particulars". It is observed that facts which are essential to disclose a complete cause of action are material facts and are required to be pleaded. On the other hand "particulars" are details of the case set up by the party and are such pleas which are necessary to amplify, refine or explain material facts. It is also noted that failure to give even a single material fact leads to incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order VI Rule 16 of the Code.

7. Accordingly, the next enquiry that will have to be undertaken is: whether the averments in the Election Petition plead all the relevant material facts to disclose cause of action. To consider this controversy, we will have to revert

to the contents of the present Election Petition.

8. The first ground on which the Petitioner seeks declaration that the election of Respondent No.1 is illegal, null and void is on account of Respondent No.1 filing false and misleading affidavit. This ground is essentially highlighted in Paras 7 to 18 of the Election Petition. The question is: whether the election of Respondent No.1 can be declared to be void on the ground of filing false or incorrect affidavit before the Returning Officer. To consider this question, we will have to advert to the grounds on which election of the returned candidate, can be declared to be void, as specified in Section 100(1) of the Act. The first amongst them, is that, in the opinion of the High Court on the date of the Election of the returned candidate, he was not qualified or was disqualified to be chosen to fill the Seat under the Constitution or the Act of 1951 or the Government of Union Territories Act, 1963. The question that will have to be considered is: whether the Election Petition invokes this ground for declaring the Election of the Respondent No.1

as void? I shall presently address this issue after referring to the relevant paragraphs, which read thus:

> "7. On 20th September, 2004, the respondent no. 1 filed his nomination along with an affidavit in the prescribed form. The respondent no. 1 was under an obligation to disclose all his liabilities towards government dues as on date of filing his nomination as required by presented format of the said affidavit. The particulars of the dues owing by respondent no. 1 are set out in letter dated 20th October, 2004. A copy whereof is annexed to the petition. The respondent no. 1 was not entitled to conceal or suppress any fact or give false information. The affidavit accompanying the nomination paper is integral part of nomination paper.
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> 8. Filing of a false affidavit could and must lead to rejection of nomination paper. Filing of a false affidavit accompanying the nomination paper amounts to a criminal offence and is punishable under representation of people Act 1951. At the relevant time, the petitioner did not know the fact that the respondent no. 1 was infact indebted to Government and there were infact outstanding government dues to the extent of Rs. 9,196/-. It is now proved as a fact as held by the Chief Election Officer, duly forwarded to Tehsildar that the respondent no.1 did file a false affidavit along with his nomination by concealing the above fact and by stating that no government dues were outstanding. The relevant facts were within the knowledge of respondent no. 1. The

fundamental right of information guaranteed under Article 19[1] [a] of the Constitution was infringed by respondent no. 1 by concealing relevant information from the returning officer as aforesaid. The format of the affidavit presented by statutory authority is mandatory. In view of the affidavit being false as aforesaid, this Hon'ble Court be pleased to hold that the respondent no. 1 did not file valid nomination and the nomination be treated as if unaccompanied by an affidavit. The petitioner submits on this ground alone, the election of respondent no.1 is liable to be declared void and the petitioner is entitled to declaration to the effect that the petitioner is elected as M.L.A. from the said constituency. The petitioner relies on order NO.3/ER/2003/JS-II dated 27th March, 2003 and orders issued by District Election Officer. The Petitioner craves leave to refer to and rely upon the same as and when produced.

9. Now a short history of the Petitioner and his works put in, in the 04-Deogad Constituency since 20 years and has done tremendous work in the constituency knowing full well that it is difficult for the Respondent No. 1 to equate the quantum of work done by the Petitioner, the Respondent No. 1 resorted to various corrupt practices through himself and his agent and/or through any other person, in the present election.

10. The Petitioner hails from the village Kunkeshwar, Taluka Deogad of the District Sindhudurg, which comes in the said 04-Deogad despite coming from a poor family of a farmer, the Petitioner has taken tremendous pains and completed his education to become a qualified engineer. Thereafter with his hard work and friendly nature, very soon he became a successful businessman. For last over 20 years the petitioner is actively participating in

social, charitable as well as political activities in Konkan Region more specifically in Mumbai and Deogad i.e. the present constituency, as a member and office bearer of the Congress Party and now the Nationalist Congress Party. In fact he is a Senior Party functionary and presently working as the Vice president of the Mumbai Pradesh Nationalist Congress Party. Earlier he has contested election of the Mumbai Municipal Corporation in 1985 as Congress [Socialist] Party candidate, formed under the leadership of Shri Sharad Pawar and was elected as a corporator from the Ward No. 35- 'Byculla' Mumbai Municipal Corporation Constituency. Again he contested the next Mumbai Municipal Corporation election in 1992 from Ward No. 24 - 'Agripada' Corporation Constituency, representing Congress [I] and won the same. He has completed the two consecutive terms as a Corporator of the Mumbai Municipal Corporation successfully. During his tenure as a Corporator the Petitioner was appointed has honoured the position such as member of Standing Committee Educational Committee, Law Committee and Improvements Committee of the Mumbai Municipal Corporation. He is widely known, loved and respected figure in Mumbai as well as in the said constituency. The Petitioner craves leave to refer to and rely upon the social works done by him in the Constituency described in the booklet.

11. The present constituency i.e. 04 - Deogad was a congress and socialist stronghold however sometimes in 1985 one Shri Janardan Moreshwar @ Appa Gogate of the Bartiya Janta Party [BJP], was elected from the said constituency for the first time wherein he secured 21,386 votes. Because of his clean image as well as the state level political fluctuations, Shri Appa Gogate retained his position in 1990

by securing 41,126 votes. In 1995 Mr. Appa Gogate secured 51,352 votes and won the election. But gradually even Shri Appa Gogate adopted the well trodden road of all politicians and started promoting nepotism in the party as well as the constituency i.e. 04-Deogad Constituency, this created lot of displeasure in the voters of 04- Deogad Constituency as well as amongst the dedicated active workers and also the office bearers of the BJP. He however contested the Maharashtra Legislative Assembly Elections in 1999, but his votes were substantially reduced to only 23,268 votes compared to his 51,352 votes in 1995, in the said election of 1999 one more reason why Appa Gogate could retain his seat was, that there was a spilt in the Indian National Congress [INC] and the Nationalist Congress Party [NCP] was born out of it as a separate political party. The Petitioner craves leave to refer to and rely upon the said election results as and when produced. These both sects i.e. Nationalist Congress Party and the Nationalist Congress Party, of the split Congress, contested the elections against each other, resultantly dividing the original Congress votes. However, in the present election both the parties i.e. INC and NCP came together forming an alliance with the Republican Party of India [RPI].

12. Now if we look at the scenario in the 04 - Deogad Constituency at the time of the present assembly election i.e. held in 2004, the situation was entirely in the favour of the Petitioner, firstly the voters were already dissatisfied with Appa Gogate as he wasn’t quite active due to his old age and secondly his tactics of nepotism were very much rejected by the people of 04 - Deogad constituency. Had the Congress not been divided the said Appa Gogate would have lost in the earlier 1999 Assembly election itself, but he

could somehow mange to retain the said seat, as both the sects i.e. INC and NCP once again came together and joined hands with the RPI in the present election the i.e. 2004, it was practically visible that whosoever would contest from Congress alliance in 04-Deogad Constituency would be definitely enjoying a upperhand over the Shiv Sena-BJP alliance. In such a situation when the candidatures of the Petitioner herein was declared as a candidate of INC/NCP/RPI alliance, it was a big jolt to the Respondent No. 1 and his party, for the simple reason that the Petitioner was enjoying one additional point that he belonged to 'Bhandari Community' which is the major community in 04 - Deogad Constituency.

13. On this background the sitting MLA Appa Gogate was still adopting nepotism and was successful in securing the candidature for his nephew Ajit Gogate i.e. Respondent No. 1 as his successor in 04 - Deogad Constituency. It is pertinent to note here that looking at the displeasure about his working and his inactivity due to old age he hand declared voluntary retirement from the election fray. But as the Candidature of Respondent No. 1 i.e. nephew of sitting MLA Shri. Appa Gogate was declared there was a turmoil generated in the district BJP and many office bearers and active members of the BJP from the Deogad Constituency resigned en-mass protesting against the candidature of Respondent No. 1 to name some of the senior persons who protested against the candidature of Respondent No. 1 were 1. Madhav Bhandari [President, Sindhudurg District, BJP Committee] and 2. Mr. Navindrachandra Bandivadekar [Vice- President, Sindhudurg District BJP] and also senior party leaders of BJP like Mr. Sudhir Joshi, Mr. Sada Ogle etc, was this less that the Janata Dal [Secular], a political Party,

which has a considerable following in the said constituency openly supported the Petitioner in 04-Deogad Constituency. Because of the cumulative effect of all these factors respondent no.1 started apprehending his sure defeat and hence he resorted to unfair means and corrupt practices since the very beginning of his campaign.

14. The Respondent No.1, despite being a practicing advocate adopted unfair means and corrupt practices from the word go. This was clear because he has knowingly furnished incorrect information regarding his liabilities payable to the Govt., Financial Institutions and /or, Govt. /Semi Govt. authorities in the mandatory affidavit submitted to the returning officer. This is for the simple reason that as per the procedure the said affidavit he is required to made public by the returning officer. The Respondent NO. 1 filed this affidavit on 20th September 2004 in prescribed alongwith his nomination as a candidate. Hereto annexed and marked as 'Exhibit A' is the true translated copy of the nomination papers alongwith the Affidavit filed by the Respondent No. 1 dated 20th September, 2004.

[a] In clause A [3] of the Para No. 3 of the affidavit of the Respondent No. 1 regarding Government dues, more particularly, sub-clause [b] thereof, against the dues in respect of the departments of water supply the Respondent No. 1 has mentioned dues as NIL which information is false and incorrect. The Petitioner craves leave to refer to and rely upon the document papers and proceedings in the criminal matter and of the department of

water supply as and when produced.

15. When the Petitioner learnt that the Respondent No. 1 has furnished incorrect information or has concealed the material particulars, he addressed a letter dated 19th October, 2004 to the Sub-Divisional Officer, Maharashtra Jeevan Pradhikaran, Deogad and requested to verify the correctness of the information furnished by the Respondent No. 1. The Petitioner received a letter from the Sub-Divisional Officer, Maharashtra Jeevan Pradhikaran Deogad dated 21st October, 2004, thereby placing on record, that as on 19th October, 2004, a sum of Rs.9,196/- (Rupees Nine Thousand One Hundred Ninety Six Only) was due and payable by the Respondent No. 1. Hereto annexed and marked as 'Exhibit B' is the copy of the true translation of the letter dated 21st October, 2004. The petitioner had therefore filed a complaint against the Respondent No. 1 with the District Election Officer and Collector, Sindhudurg. After hearing both the parties the District Election Officer and Collector, Sindhudurg passed an order dated 9th November, 2004 thereby holding that the Respondent No. 1 is guilty of suppression of material facts and which is a defect of substantial character, directed the Assistant District Election Officer to register the offence as per law. I crave leave to refer to any rely upon the same s and when produced. I request the Court to direct the Assistant District Election Officer, Sindhudurg, therein to produce the said order in Court. This act of the respondent No. 1 falls squarely into the grounds for declaring the election to be void under section 100 of the Act. The Petitioner respectfully submits that since the affidavit in the prescribed format is required to be filed alongwith the

nomination papers, it forms the part of the nomination papers, therefore if the affidavit suffers from any defect of substantial character, the nomination filed by the candidate is deemed to be defective and therefore the same should be rejected. In the present case, the affidavit filed by the Respondent No. 1 suffers from the defect of a substantial character therefore the nomination filed by the Respondent No. 1 is liable to be rejected in limine. The election of the respondent No. 1 on a defective nomination is therefore void and invalid.

16. The Petitioner relies on section 123, 125 A, 127 A, 130 and other relevant provisions of the act.

17. On 20th September, 2004, the respondent no. 1 filed his nomination along with an affidavit in the prescribed form. The respondent no. 1 was under an obligation to disclose all his liabilities towards government dues as on date of filing his nomination as required by presented format of the said affidavit. The particulars of the dues owing by respondent no. 1 are sent out in letter dated 20th October, 2004. A copy whereof is annexed to the petition. The respondent no. 1 was not entitled to conceal or suppress any fact or give false conformation. The affidavit accompanying the nomination paper is integral part of nomination paper.

18. Filing of a false affidavit could and must lead to rejection of nomination paper. Filing of a false affidavit accompanying the nomination paper amounts to a criminal offence and is punishable under representation of people Act 1951. At the relevant time, the petitioner did not know the fact that the respondent no. 1 was infact indebted to Government and there were infact outstanding government

> dues to the extent of Rs. 9,196/-. It is now proved as a fact as held by the Chief Election Officer, duty forwarded to Tehsildar that the respondent no. 1 did file a false affidavit along with his nomination by concealing the above fact and by stating that no government dues were outstanding. The relevant facts were within the knowledge of respondent no. 1. The fundamental right of information guaranteed under Article 19[1] [a] of the Constitution was infringed by respondent no. 1 by concealing relevant information from the returning officer as aforesaid. The format of the affidavit presented by statutory authority is mandatory. In view of the affidavit being false as aforesaid, this Hon'ble Court be pleased to hold that the respondent no. 1 did not file valid nomination and the nomination be treated as if unaccompanied by an affidavit. The petitioner submits on this ground alone, the election of respondent no. 1 is liable to be declared to the effect that the petitioner is elected as M.L.A. from the said constituency. The petitioner relies on order no.3/ER/2003/JS.II dated 27th March, 2003."

9. Even on fair reading of the entire Petition, it is not possible to take the view that the assertions in the Petition are in any manner referable to ground for declaring election void within the meaning of Section 100(1)(a) of the Act. Similarly, the ground of filing false affidavit by the returned candidate is not a corrupt practice within the meaning of Section 123 of the Act.

There can be no quarrel with this proposition. In that sense, even the second ground provided in Section 100(1)(b) cannot be invoked. The third ground provided in Section 100(1)(c) is one of improper rejection of any nomination. That is not the case made out by the Petitioner in the present Petition. In the circumstances, the only other ground which remains to be adverted to and presumably has been invoked by the Petitioner against the Respondent No.1 is referable to Section 100(1)(d). Section 100(1)(d) in turn refers to four situations. The first is of improper acceptance of any nomination. Even on construing the abovesaid allegations in the Petition liberally, it is not possible to assume that the ground under clause (i) has been invoked in the context of allegation of filing of false affidavit by the Respondent No.1 before the Returning Officer. Perhaps, it is possible to say that the Petitioner has invoked the fourth clause provided in Section 100(1)(d). That refers to non-compliance of the provisions of the Constitution or of the Act of 1951 or of any rules or orders made under that Act. To invoke this

ground, however, what is required to be alleged is that the result of the election insofar as it concerns the returned candidate has been materially affected by such act-whether referable to clause (i) or clause (iv) in Section 100(1)(d).

10. Let us now scan through the Election Petition to ascertain whether this requirement has been clearly stated in the Election Petition. Counsel for the Petitioner during course of argument has submitted that the Court will have to consider the Petition as a whole and not pick up one or two paragraphs to answer the point in issue. In addition to paragraphs 7 to 18, he placed reliance on Paragraphs 5, 6, 29, 30, 31, 32, 33 and 34 to contend that it is a case of improper acceptance of nomination of the Respondent No.1 on account of filing of false affidavit before the Returning Officer. It will be apposite to reproduce the above said paragraphs in its entirety, which read thus:

> "5. The Petitioner is challenging the election of the Respondent No.1 i.e. the returned candidate, on the various grounds of corrupt practice amongst other grounds,

that the results of the election in so far as the returned candidate is concerned have been materially affected by the non compliance of and/or acts of violation of the provisions of the Representation of the People's Act, 1951, the Rules framed thereunder viz. the Conduct of Election Rules 1961 and the Orders passed thereunder as also the Model Code of Conduct for the Guidance of Political Parties and Candidates issued by the Election Commission of India and the Order dated 27th March, 2003. The Respondent No.1, himself his election agent or by any other person with the consent of the Respondent No.1 or his election agent have committed acts which are and deemed to be corrupt practices under the provisions of the Representation of the People's Act 1951. [hereinafter referred to as 'the Act'] and/or otherwise prohibited under the provision of the conduct of Election Rules, 1961 [hereinafter referred to as 'the Rules'] and / or the Model Code of Conduct for the Guidance of Political Parties and Candidates issued by the Election Commission of India. [hereinafter referred to as "the Code of Conduct"]

6. As per the provisions of the Act and orders and direction so far issued or passed by the Election Commission of India, the Respondent No.1 is disqualified from contesting the said election and his nomination should have been rejected by the Returning Officer. The results of the election has materially been affected due to improper acceptance of the nomination of the Respondent No.1 and that corrupt practices have been committed by the respondent No.1 and his election agent and many other persons with the consent of the respondent No.1 and or his election agent. Even otherwise the results of the said election in so far as they pertain to the returned candidate are concerned, are

demonstrably materially affected by such acts of corrupt practices or breaches of the provisions of the Act, Rules framed thereunder or the Code of Conduct, committed by the returned candidate, his election agent and / or other persons with the consent of the returned candidate or his election agent. The Acts of the Respondent No.1 his election agent or by other person by the consent of the Respondent No.1 or his election agent, violating of the provisions of the Code of Conduct are offences under the Act. On these grounds itself the election of the respondent No.1 who is the returned candidate should be declared as void u/s 100 (1) of the Representation of the People Act, 1951. The petitioner relies on section 123, 125 A, 127A, 130 and other relevant provisions of the act.

29. In these facts and circumstances it is clearly established that :-

[a] The Respondent No.1 has furnished wrong and/or incomplete information and/or have suppressed the material information in or from the affidavit dated 20th September, 2004, in the to the Order dated 27th March, 2003 passed by the Election Commission of India, which is a defect of substantial characters and therefore the nomination filed by the Respondent No.1 is defective.

[b] The Respondent NO.1 either himself or through his election agent, or any person with the consent of the Respondent No.1 or his election agent has committed severe breaches and/or violation of the directions/orders contained in the Model Code of Conduct issued by the Election Commission of India and/or orders passed by them from time to time in exercise of their authority under Article 324 of Constitution of India.

[c] The Respondent No.1, his Election agent or other person with the consent of the Respondent No.1 or his election agent have committed several acts which clearly amount to corrupt practices as defined under the provisions of the Act.

[d] It is pertinent to note the Respondent No. 1 who has the audacity and guts to lead about 350 of his party workers and attack the Deogad Police Station on the 15th day of October, 2004. He has the audacity to take the law and order in his own hands. The Deogad Police Station has registered an FIR being FIR no. 47 of 2004, wherein he is the main accused. The Petitioner craves leave to refer to and rely upon the same as and when produced. In these circumstances one can understand what would be the fate of the poor villages in the said constituency.

30. The Petitioner submits that by the acts of the Respondent No.1, either the breaches and/or violation of the provisions of the Code of Conduct and/or other orders passed by the Election commission of India or amounting to corrupt practice under the provisions of the Act, the result of the election is materially affected and the election of the respondent NO.1 is liable to be set aside under the provisions of the Act.

31. The petitioner submits that not only that the Respondent No.1 is not entitled to contest the election in view of the substantial defect in his affidavit dated 20th September, 2004 but after deducting the affected votes of the Respondent No.1 is clear that the petitioner is entitled to be declared elected and this Hon’ble Court be pleased to declare the petitioner as duly elected from the ’O4’ Deogad Assembly Constituency.

32. The Petitioner relies on section 123,

125A, 127A, 130 and other relevant provisions of the act.

33. On 20th September, 2004, the respondent no. 1 filed his nomination along with an affidavit in the prescribed form. The respondent no. 1 was under an obligation to disclose all his liabilities towards government dues as on date of filing his nomination as required by presented format of the said affidavit. The particulars of the dues owing by respondent no. 1 are set out in letter dated 20th October, 2004. A copy whereof is annexed to the petition. The respondent no. 1 was not entitled to conceal or suppress any fact or give false conformation. The affidavit accompanying the nomination paper is integral part of nomination papers.

34. Filing of a false affidavit could and must lead to rejection of nomination paper. Filing of a false affidavit accompanying the nomination paper amounts to a criminal offence and is punishable under representation of people Act 1951. At the relevant time, the petitioner did not know the fact that the respondent no. 1 was infact indebted to Government and there were infact outstanding government dues to the extent of Rs. 9,196/-. It is now proved as a fact as held by the Chief Election Officer, duly forwarded to Tehsildar that the respondent no. 1 did file a false affidavit along with his nomination by concealing the above fact and by stating that no government dues were outstanding. The relevant facts were within the knowledge of respondent no. 1. The fundamental right of information guaranteed under Article 19[1] [a] of the Constitution was infringed by respondent no. 1 by concealing relevant information from the returning officer as aforesaid. The format of the affidavit presented by statutory authority is mandatory. In view

> of the affidavit being false as aforesaid, this Hon'ble Court be pleased to hold that the respondent no. 1 did not file valid nomination and the nomination be treated as if unaccompanied by an affidavit. The petitioner submits on this ground alone, the election of respondent no. 1 is liable to be declared void and the petitioner is entitled to declaration to the effect that the petitioner is elected as M.L.A from the said constituency."

11. In the first place, I shall analyse the Election Petition parawise to discern whether all the relevant material facts to disclose cause of action so as to declare the election of Respondent No.1 as void on the stated ground is made out. On reading each of the above para independently or all the paragraphs as a whole, it is not possible to take the view that the ground provided in Section 100(1) (a) has been invoked by the Election Petition. The said ground provides that on the date of election of the returned candidate, he was not qualified or was disqualified to be chosen to fill the seat under the Constitution or the Act of 1951 or the Government of Union Territories Act, 1963. The qualification to be elected as member of the Legislative Assembly of the State is provided by the Constitution under Article 173. It is not

the case of the Election Petitioner that the Respondent No.1 was a person not qualified to be chosen to fill a seat in the Legislature of a State, having failed to fulfil any of the qualifications referred to in Article 173 of the Constitution. Insofar as Act of 1951 is concerned, Section 5 provides for qualifications of membership of a Legislative Assembly. Once again, nowhere in the Petition, it is even remotely suggested that the Respondent No.1 was not qualified within the meaning of the said provision. Similarly, in the entire Petition, it is nowhere the case of the Petitioner that the Respondent No.1 was disqualified to be chosen to fill the seat under any of the provisions of the Constitution or the Act of 1951. The provision regarding disqualification can be culled out from Chapter III and Chapter IV of Act of 1951. Section 8 of the Act of 1951 provides for disqualification on conviction for certain offences. It is not the case of the Petitioner that the Respondent No.1 has been convicted for any of the specified offences under that provision. From the averments in Paragraphs 15 and 16 referred to above, it can at

best be assumed that the Petitioner asserts that criminal case for offence punishable under Section 125A of the Act has been registered against the Respondent No.1. That, however, is not sufficient to disqualify Respondent No.1 on the date of his election on which he was declared a returned candidate. The disqualification, if at all, will be incurred after the criminal case ends in conviction. Interestingly, Section 125A of the Act is not part of the several specified offences under Section 8. Section 8(1)(a) refers to offence under Section 153A or 171E or 171F or sub-section (1) or sub-section (2) of Section 376 or Section 376A or Section 376B or Section 376C or Section 376D or Section 498A or Section 505(2) and (3) all of Indian Penal Code. On careful analysis of Section 8 of the Act of 1951, it is seen that the offences under the Act of 1951 which are specified in clause (i) of Section 8(1) are only Section 125, 135, 135A and 136(2)(a). In other words, Section 125A which deals with penalty for filing false affidavit has not been specified as offence for the purpose of disqualification. Suffice it to observe that ground under Section 100(1)(a) has not been pressed

into service.

12. The only other ground which can be ascribable to the contents of paragraphs referred to above is Section 100(1)(d)(i) or (iv). Insofar as Section 100(1)(d) whether clause (i) or clause (iv) is concerned, the same can be invoked only if the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of any nomination or by any non-compliance of the provisions of the Constitution or of the Act of 1951 or any rules or orders made under the Act. The material facts to disclose cause of action for invoking these grounds would also require allegation of filing of false affidavit with "intent to " materially affect the result of the election. One of the ingredients of offence under Section 125A is that the false affidavit has been filed with intent to be elected in the election, the candidate gives false information in such affidavit which he knows or has reason to believe to be false or conceals any information. Besides, the election of such returned candidate can be declared void in terms of

Section 100(1)(d) only if it were to be asserted that, in fact, because of the false affidavit filed by the returned candidate, the result of his election is materially affected; and provide for material facts as to in what manner the election has been materially affected.

13. Going back to Paragraph 5 of the Petition, the averments therein are too general. The contents thereof are more or less reciting or reproducing the language of the relevant provisions, for which, the election of the returned candidate can be declared void. Same is the situation with regard to the contents of Paragraph 6 of the Petition referred to above. As a matter of fact, the Petition makes no distinction as to the fact that the election of the Respondent No.1 is materially affected because of the false affidavit or on account of the alleged corrupt practices specified in the Petition. Indeed, in Paragraph 5, it is mentioned that the election of the returned candidate has been materially affected by non-compliance and or acts of violation of the provisions of Act of 1951 ad so on. As mentioned

earlier, that is only reproduction of the language of the provision and not giving the material facts on the basis of which that allegation can be maintained. Viewed thus, Paragraphs 5 and 6 of the Petition will be of no avail to the Petitioner.

14. That takes us to Paragraphs 7 and 8 of the Petition. In Paragraph 7, it is mentioned that the Respondent No.1 filed his nomination with the Returning Officer in the prescribed form. The Respondent No.1 was under an obligation to disclose all his liabilities towards Government dues as on the date of filing his nomination as required by present format of the said affidavit. It then proceeds to mention that the Respondent No.1 ought not to have concealed or suppressed any fact or provided false information in the affidavit, which is an integral part of the nomination papers. In Paragraph 8, it is stated that filing of false affidavit must lead to rejection of nomination paper. It is then stated that later on the Petitioner learnt about suppression of relevant fact by the Respondent No.1 in the affidavit that he was indebted to the Government to the extent of

Rs.9,196/- (Rupees Nine Thousand One Hundred Ninety-six) and that fact has now been established before the Chief Election Officer. Even on fair reading of Paragraphs 7 and 8 independently or together, it is nowhere stated that the false affidavit was filed by the Respondent No.1 with an intent to be elected in the election and that the Respondent No.1 knew and had reason to believe that the information given in the affidavit was false or that the false affidavit was filed with an intent to materially affect the result of the election of the Respondent No.1 and further, in fact, because of such false affidavit, the result of the election has been materially affected insofar as the Respondent No.1 is concerned and the manner in which it has so affected. In absence of such averments, it necessarily follows that all the relevant material facts to disclose cause of action have not been stated in the Petition.

15. We shall now refer to Paragraphs 9 onwards. In Paras 9 and 10, the emphasis is placed on certain events which have unfolded in last twenty years to give the short history of the

Petitioner and his political achievements. Even this paragraphs will be of no use for considering the point in issue.

16. That takes us to Paragraph 11 of the Petition. This Paragraph mentions as to how the candidate of the party to which the Respondent No.1 belonged, had lost his strong hold on the Constituency and the voters. Even on liberal reading, at best, it can be said that the Petitioner intends to project that the party to which he belonged namely Nationalist Congress Party had better chances during the subject elections. Once again, even this Paragraph does not refer to any material fact so as to constitute cause of action to invoke the ground under consideration. The tenor of Paragraph 12 is to mention that there was strong possibility of any candidate belonging to the Congress-NCP alliance winning the election from Deogad Constituency, defeating the candidate belonging to alliance of Shivsena-BJP. It is lastly mentioned that the Petitioner had better chances also because he belonged to Bhandari Community which is the major community in Deogad

Constituency. Even this Paragraph is of no avail, as it makes no attempt to disclose relevant material facts to invoke the subject ground, leave alone, all the relevant material facts to make out cause of action.

17. That takes us to paragraph 13 of the Petition. In this Paragraph, an attempt has been made to project that there was immense displeasure on account of nomination of the Respondent No.1 as candidate of Shivsena-BJP Alliance. It is stated that en-mass protest and resignation followed within the party after the candidature of Respondent No.1 was announced. It is stated that the Respondent No.1 therefore apprehended that he was bound to be defeated and for which reason, he resorted to unfair means and corrupt practice, since the very beginning of the election campaign. Even this paragraph 13 is of no avail to answer the point in issue in favour of the Petitioner.

18. Insofar as Para 14 is concerned, it is averred that the Respondent No.1 adopted unfair means and corrupt practices from the word ‘go’,

which is clear from the fact that he furnished incorrect information regarding his liabilities payable to the Government, Financial Institutions and/or Government, Semi-Government Authorities in the affidavit which was required to be submitted to the Returning Officer. In clause (a), it is stated that the Respondent No.1 mentioned in Para 3 of the affidavit that he had no Government dues. Once again, all the relevant material facts to disclose cause of action for invoking subject ground have not been spelt out. In fact, this Paragraph does not provide for any material fact required to make out ground under Section 100(1)(d) of clause (i) or clause (iv).

19. In Paragraph 15, it is averred that the Petitioner learnt that Respondent No.1 had furnished incorrect information or had concealed the material particulars, for which reason, the Petitioner addressed letter to the appropriate authority to ascertain the correctness of the information furnished by the Respondent No.1. In response to that query, the Petitioner has been informed that the Respondent No.1 was in arrears in

the sum of Rs.9,196/- (Rupees Nine Thousand One Hundred Ninety-six) payable to the Sub-Divisional Officer, Maharashtra Jeevan Pradhikaran, Deogad as on 19th October 2004. The Petitioner thereafter filed complaint before the Election Officer and the Election Officer has held that the Respondent No.1 was guilty of suppression of material facts and therefore directed the Assistant District Election Officer to register the offence as per law. It is then mentioned that the said act of Respondent No.1 falls squarely into the grounds for declaring the election to be void under Section 100 of the Act. It is stated that if the affidavit filed by the Respondent No.1 suffers from any defect of substantial character, the nomination filed by the Respondent No.1 is deemed to be defective and the same should have been rejected. In substance, the Petitioner alleges that the election of Respondent No.1 be declared void and invalid on account of defective nomination. In the first place, the question of improper acceptance of any nomination within the meaning of Section 100(1)(d)(i) will arise only if the candidate was not qualified to be chosen to fill that seat under the provisions of

the Constitution and the Act of 1951 or under the provisions of the Government of Union Territories Act, 1963, as is required by Section 32 read with Section 33 of the Act. Be that as it may, it is not necessary for me to go into the correctness of the stand taken by the Petitioner whether the nomination was defective and therefore resulted in improper acceptance to be a ground for declaring election of Respondent No.1 void. For the present, what is to be noted is: whether the Election Petition discloses all the relevant material facts necessary to invoke the subject ground so as to make out cause of action to proceed with the Petition? As has been observed earlier, even in this Paragraph, none of the relevant material facts have been stated to the effect that the false affidavit was filed by the Respondent No.1 with intent to be elected in the election and had given false information which he knew or had reason to believe to be false and further, that the result of the election insofar as Respondent No.1 is concerned being the returned candidate has been materially affected by such defect in the affidavit.

20. Insofar as Para 16 is concerned, that only mentions that the Petitioner relies on Section 123, 125A, 127A and 130. Interestingly, neither Section 123, 127A or Section 130 has any relevance to the ground for declaring the election of returned candidate void, which is under consideration.

21. That takes me to Paragraph 17 of the Petition. It only mentions that the Respondent No.1 was under an obligation to disclose all his liabilities towards Government dues as on date of filing his nomination as was required by format of the affidavit and that the Respondent No.1 could not have concealed or suppressed any fact or given false information. It is once again reiterated that the affidavit in which incorrect information is given, was accompanying the nomination papers and therefore formed integral part of the nomination papers.

22. More or less, same is the position reiterated in Paragraph 18 and then it is asserted that the election of Respondent No.1 is liable to

be declared as void and the Petitioner is entitled to declaration to the effect that he is elected as M.L.A. from the said constituency.

23. Once again averments in these paragraphs makes no reference to the relevant material facts to constitute cause of action to proceed with the ground asserted for declaring the election of Respondent No.1 as void.

24. We shall now turn to paragraphs 29 onwards of the Petition. In clause (a) it is merely stated that incomplete information is given in the affidavit by the Respondent No.1 and he has suppressed material information which is a defect of substantial character, for which reason, nomination filed by Respondent No.1 is defective. In clause (b) it is stated that the Respondent No.1 either himself or through his election agent or any person with the consent of Respondent No.1 or his election agent has committed severe breaches and/or violation of the directions/orders contained in the Model Code of Conduct issued by the Election Commissioner of India, and/or orders passed by them

from time to time. Allegation in clause (b) of this paragraph has nothing to do with the ground under consideration. Even the latter part of the same paragraph or for that matter paragraph 30 does not pertain to the subject ground.

25. In paragraph 31, it is stated that the Respondent is not entitled to contest the election in view of the defective affidavit filed by him and his election will have to be declared as void. In para 32, reference is made to Sections 123, 125A, 127A and 130, as was made in Paragraph 16 earlier. Paragraphs 33 and 34 again refer to the false affidavit filed by the Respondent No.1 and it is asserted that because of such false affidavit, nomination of Respondent No.1 ought to have been rejected. In none of these paragraphs as has been observed earlier, all the relevant material facts have been disclosed to constitute cause of action for invoking ground under Section 100(1)(d), clause (i) or clause (iv). The consequence is that, the Petition as filed is not a complete Election Petition within the meaning of Section 83(1)(a) of the Act, for which reason, will have to be

dismissed under Section 86(1) of the Act read with provisions of Order VII Rule 11 of the Code, as it fails to disclose cause of action. As complete material facts to disclose cause of action so as to invoke the ground in question have not been given in the Election Petition, as observed in the cases of **Dhartipakar Madan Lal Agarwal v. Shri.Rajiv Gandhi reported in AIR 1987 SC 1577, Samar Singh v. Kedar Nath & Ors. reported in AIR 1987 SC 1926**, it is open to this Court to strike off the above paragraphs from the pleadings being unnecessary, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the Petition.

26. At one stage, it was sought to be contended by the Counsel for the Petitioner that the Respondent No.1 having already filed written statement before this Court, it was not open to frame preliminary issue and to consider the same. The decision in **Dhartipakar's case (Supra)** is an authority also on the point that the Court is empowered "at any stage of the proceedings" to invoke such power and to strike off or delete

pleading which is unnecessary, scandalous, frivolous, vexatious or which may tend to embarrass or delay the fair trial.

27. That takes us to the second ground on which the Petitioner seeks declaration that the election of the Respondent No.1 is illegal, null and void. It is the case of the Petitioner that the Respondent No.1 caused undue influence on the voters and played fraud on them. This ground is ascribable to Section 100(1)(b) and 100(1)(d)(ii) of the Act. Section 100(1)(b) provides that if the High Court is of the opinion that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent, may declare the election of the returned candidate to be void. Insofar as Section 100(1)(d)(ii) is concerned, that is a ground available for declaring the election of the returned candidate to be void if the High Court is of the opinion that the result of the election insofar as it concerns the returned candidate has been materially affected by any corrupt practice

committed in the interests of the returned candidate by an agent other than his election agent. The nature of allegation in the relevant paragraphs to which I shall make reference a little later is ascribable to corrupt practice within the meaning of Section 123(2) of the Act. The said provision reads thus:

> "123(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:
>
> Provided that-
>
> (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who-
>
> (i) threatens any candidate or any elector, or any person in whom a candidate or an elector interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or
>
> (ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

> shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;
>
> (b) a declaration of public policy, or a promise of publication, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause."

28. It will be useful to advert to the explanation (1) immediately following sub-section (8) in the same provision which is also applicable and reads thus:

> *Explanation.*-(1) In this section, the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate." (emphasis supplied)

29. On analysing the above said provision, to succeed in the allegation of corrupt practice, it will have to be stated that there was direct or indirect interference on the part of the candidate or his agent or of any other person with the consent of the candidate or his election agent with

the free exercise of any electoral right. If it is a ground under Section 100(1)(d)(ii) in view of explanation referred to above, it will have to be stated that the person who indulged in the activity being any person, was held to have acted as an agent in connection with the election with the consent of the candidate. The Petitioner will have to clearly assert whether the corrupt practice was committed by the returned candidate or whether by his election agent or by any other person with the consent of a returned candidate or his election agent and that act was direct or indirect interference or attempt to interfere with the free exercise of any electoral right. In case of ground under 100(1)(d)(ii), it will have to be further stated that the alleged corrupt practice committed by an agent other than the election agent of the returned candidate, has materially affected the result of the election of the returned candidate. For this, all necessary details as to in what manner the result of the election has been materially affected will have to be spelt out in the Petition.

30. It will be useful to make reference to the decision of the Apex Court in **Azhar Hussain's case (Supra)**. In Paragraph 10 of this reported decision, the Apex Court referred to its earlier decision in **Hardwari Lal vs. Kanwal Singh (1972) 2 SCR 742**, wherein it is observed that the Petitioner is expected to state as to which kind or form of assistance was obtained or procured or attempted to be obtained or procured. It is to be stated from whom the particular type of assistance was obtained or procured or attempted to be obtained or procured. It is to be stated in what manner the assistance was for the furtherance of the prospects of the election of the returned candidate. While referring to another earlier decision in **Samant's case (AIR 1969 SC 1201)** in Para 11, in the reported decision, the Apex Court has observed that it is established position that the omission of a "single material fact" would lead to an incomplete cause of action and that an Election Petition without the material facts relating to a corrupt practice is not an election petition at all. In the same paragraph, while referring to **Uddhav Singh's case (AIR 1977 SC 744)**, it is restated that all the

primary facts which must be proved by a party to establish a cause of action or his defence are material facts. Indeed, in this decision, the Court was considering corrupt practice within the meaning of Section 123(7) of the Act, but the principle stated as to what should be the contents of an election petition, so as to make out case of corrupt practice would apply on all fours. After considering several decisions in Para 14 of this reported Judgment, the Apex Court has observed thus:

> "14. Before we deal with these grounds seriatim, we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression 'material facts and particulars, which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Act.
>
> (1) What are material facts and particulars?
>
> Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the

election petition on the basis of the facts pleaded in the petition.[(1969) 3 SCR 217 : (AIR 1969 SC 734) - Manubhai Nandlal Amarsey v. Popatlal Manilal Joshi].

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a Government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded "[(1972) 2 SCR 742: (AIR 1972 SC 515) - Hardwari Lal v. Kanwal Singh].

a) mode of assistance;
b) measure of assistance; and
c) all various forms of facts pertaining to the assistance.

(3) In the context of an allegation as regards procuring, obtaining abetting or attempting to obtain or procure the assistance of Government servants in election it is absolutely essential to plead the following :

(a) kind or form of assistance obtained or procured;

(b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election candidate for promoting the prospects of his election. [AIR 1972 SC 515].

(4) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured [AIR 1972 SC 515].

(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was

> furthered and the way in which the assistance was rendered. (AIR 1972 SC 515) (supra).
>
> (6) The election petitioner, must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in the particulars. (AIR 1972 SC 515)(supra)."

31. Although the principle stated in Para 18 of this reported decision may not be relevant for the time being, as I am dealing with this Judgment, I may observe that in Para 18 of this reported Judgment, the Apex Court has observed that unless the relevant or offending passage from the speech is quoted, it cannot be said what exactly the speaker has said and in what context and whether it was calculated to prejudice the election prospects of the Respondent. It is further observed that the averments pertaining to the charge should disclose that "prior consent" of the candidate or his election agent in regard to what the speaker was going to say and the purpose for which he was going to say is set-out, else, it cannot be said that it discloses the cause of action and the test laid down in **Manubhai Nandlal's case** remains to be

complied. I shall elaborate on this aspect a little later. Suffice it to observe that the material fact to make out a case of corrupt practice should specifically provide for the date, time, place, the names of the workers said to have been employed by the candidate or his election agent who committed the offending act to form the basis to disclose the cause of action. In Paragraph 22 of this decision, the Apex Court has observed that the principle laid down in several decisions to which reference has been made in the reported Judgment is that the pleading in regard to matters where there is scope for ascribing an alleged corrupt practice to a returned candidate in the context of a meeting of which dates and particulars are not given would tantamount to failure to incorporate the essential particulars. This is because a possibility that witnesses could be procured in the context of a meeting at a place or date convenient for adducing evidence and no amount of evidence could cure the basic defect in the pleading.

32. It will be apposite to advert to Para 31

of this reported decision which deals with the requirement of averments of alleged consent of the returned candidate, which reads thus :

> "31. There is no averment to show that the publication was made with the knowledge or consent of the returned candidate when the book was published in June, 1983. In fact, in 1983 there was no question of having acted in anticipation of the future elections of 1985 and in anticipation of the respondent contesting the same. In the election petition even the offending paragraphs have not been quoted. The petitioner has set out in paragraphs (a) to (h) the inferences drawn by him or the purport according to him. This apart, the main deficiency arises in the following manner. The essence of the charge is that this book containing alleged objectionable material was distributed with the consent of the respondent. Even so strangely enough even a bare or bald averment is not made as to:
>
> i) whom the returned candidate gave consent;
>
> ii) in what manner and how; and
>
> iii) when and in whose presence the consent was given,
>
> to distribute these books in the constituency. Nor does it contain any material particulars as to in which locality it was distributed or to whom it was distributed, or on what date it was distributed. Nor are any facts mentioned which taken at their face value would show that there was consent on the part of the returned candidate. Under the circumstances, it is difficult to

> comprehend how exception can be taken to the view taken by the High Court."

33. In the case of **Ravinder Singh vs. Janmeja Singh reported in 2000 SC 3026**, while considering the case of corrupt practice within the meaning of Section 123(1) of the Act the Apex Court has observed that election petition levelling a charge of corrupt practice is required by law, to be supported by an affidavit in which the election Petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for insistence of this requirement is that the Petitioner who makes a serious charge should take the full responsibility so as to avoid any fishing and roving enquiry and save the returned candidate from being taken by surprise.

34. Keeping the above principles in mind, we shall now proceed to consider whether the Petitioner has set-out all the relevant material facts to disclose cause of action in respect of corrupt practice within the meaning of Section

123(2) in relation to the circumstances referred to in paras 19 and 20 of the Petition. Paras 19 and 20 of the Petition read thus:

> "19. The conduct of the respondent No. 1 thereby causing undue influence on the Voters and playing fraud upon the voters is quite evident from various incidences given in this Petition. The Electronic Voting Machines [EVM[were introduced for the first time in the Loksabha Elections held on 26th April, 2004 in Konkan and Western Maharashtra. During the said election it was only the second time that the EVMs were used in the said constituency. That the said constituency is in rural area and the electors ar still not familiar with electronic gazettes generally and the use and working of the EVMs in particular. In the list of candidates prepared by the Returning Officer on 25th September, 2004 the name of the Respondent No. 1 was on the 1st slot of the EVM. Taking advantage of this and the ignorance of the electors towards the gizmos and the unfamiliarity of the electors about the functioning of the EVMs the Respondent No. 1 himself, his election agent and other person employed and/or working at the instance of the Respondent No. 1 or his election agent, systematically campaigned and mis-represented to the electors, especially in the areas and villages where the Petitioner was likely to receive good response. In the last few days the Respondent No. 1 and his election Agents campaigned, that the EVMs are required to be first activated by pressing the top white button on the right side column [which was the button against the name of the Respondent No. 1] and then the actual

vote can be casted by pressing the other button and if the voters would press the second button first [which infact as button against the name of the Petitioner] then the voters would get a shock [electric shock]. I crave leave to refer to and rely upon the newspaper reports and statements supporting thereto alongwith the affidavits of few of such voters as an example. Believing this false campaign many electors, did first press the button on the top right of the EVMs in order to activate it [which was infact the button to vote the Respondent No. 1] but after hearing the beep they realized that their vote is casted wrongly in favour of the Respondent No. 1, against their wishes. When some of the voters without understanding the beep tried to press the button for the second time to vote the Petitioner [as per the campaign of Respondent No. 1 to activate the machine first], the returning staff stopped them from doing so and informed them that they have already casted their vote in favour of Respondent No. 1 and that the EVM does not require any sort of activation by pressing the top button on the right side column [i.e. the button to be pressed to vote Respondent NO.1.) it is a clear cut case of corrupt practice. Hereto annexed and marked as "Exhibit BA and BB" are the affidavits of the voters of the said constituency stating how people were fooled and cheated and misrepresented in the said Constituency.

20. By this fraudulent campaigning and/or mis-information canvassed by the Respondent No.1, his election agent or other persons by consent of either the Respondent No. 1 or his election agent, the Respondent No. 1 has committed corrupt practices under the Provisions of the Act, the Code of Conduct and/or the orders passed by the Election Commission of India and have materially affected the

> results of the election, especially in view of such a small margin of votes between the Petitioner and the Respondent No. 1."

35. In addition to these Paragraphs, the Petitioner also relies on Paragraphs 5 and 6 which are reproduced earlier in its entirety. Even if the individual paragraphs were to be construed on their own or all the aforesaid paragraphs 5, 6, 19 and 20 were to be read as a whole, the question is whether the Petitioner has set out all the relevant material facts to disclose cause of action to try the Petition. I have already considered the efficacy of contents of Paras 5 and 6 in earlier part of this Judgment. The contents of the said paragraphs are too general and mere reproduction of the provision in the Act. That will be of no assistance to the petitioner. The specific case made out in Paras 19 and 20 will have to be considered in detail.

36. In Para 19, the case made out by the Petitioner is that electronic voting machines were introduced for the first time in the Constituency.

The Constituency is in rural area and the electors are not familiar with electronic gazette. It is then stated that in the list of candidates prepared by the Returning Officer on 25th September 2004, the name of the Respondent No. 1 was on the 1st slot of these machines. It is then averred that taking advantage of the ignorance of the electors to handle these machines, the Respondent No.1 himself, his election agent and other persons employed and/or working at the instance of Respondent No.1 or his election agent systematically campaigned and misrepresented to the electors, especially in the area and villages where the Petitioner was likely to receive good response. Even on accepting this assertions as it is, it makes no reference to the necessary details or complete material facts so as to disclose cause of action. Inasmuch as, no mention is made as to who are the other persons. They have not been named, the place where such propaganda is carried out is not specified. The time and date is also not specified. Besides, the allegation is not only vague but confused one. The Petitioner is not certain whether the Respondent No.1 himself

indulged in that propaganda or the election agent of the Respondent No.1 did the offending acts or that other persons who allegedly indulged in the offending acts were employed to carry on such propaganda by the Respondent No.1 or his election agent. There is no certainty in the allegation as to pin-point the person responsible for such propaganda or to give details as to events which unfolded which will be material facts to disclose the cause of action. It is further mentioned in the same Para 19 of the Petition that in the last few days, the Respondent No.1 and his election agents campaigned that the machines are required to be first activated by pressing the top white button on the right side column [which was the button against the name of the Respondent No.1] and then the actual vote can be casted by pressing the other button. The voters were also told that if the voters would press the second button first [which infact was the button against the name of the Petitioner] then the voters would get a shock [electric shock]. In this portion in Para 19, the specific case of the Petitioner seems to be that the Respondent No.1 and his election agents

campaigned. Once again, no details regarding material facts as to whether Respondent No.1 alone or along with his election agent campaigned in this form together or independently. Besides, no material fact is provided as to who, the place and the time where the Respondent No.1 or his election agent had campaigned in this manner. Besides, the Petitioner has not disclosed the source of information that such campaign was carried out by Respondent No.1 or his election agent. It necessarily follows that even this part of the Petition is bereft of relevant material facts to disclose cause of action. Petitioner then refers to some newspaper reports and statements supporting the assertion made in the earlier part of Paragraph 19. In the first place, the contents of the newspaper reports are not spelt out. The date of the newspaper report is not mentioned, nor is the name of the newspaper mentioned. If it is so, the newspaper to which Petitioner intends to refer would become integral part of this Petition, but the same has not been annexed. I shall deal with this aspect a little later while considering issue No.1.

37. It is further mentioned in the Petition that the Petitioner would also rely on the affidavits of voters to illustrate the point. It is then mentioned that believing the false campaign, many electors first pressed the button on the top right of the machine in order to activate it (which was in fact the button to vote Respondent No.1). However, it is stated after hearing the beep the voters realized that their vote is already cast wrongly in favour of Respondent No.1 against their wishes. In some cases, the voters without understanding the beep already given after pressing button on the top right of the machine, attempted to press the button for the second time to vote for the Petitioner (as per the campaign of the Respondent No.1 to activate the machine first), the Returning staff stopped them from doing so and told that they have already given their vote. On this basis, it is stated that it is a clear cut case of corrupt practice. In support, affidavits of Dashrath Sadashiv Ghadi, Suresh Vithu Ghadi, Subhash Balkrishna Masurkar and Sandeep Tukaram Mayekar are filed along with the Petition. These

affidavits are stereo type. It is mentioned that on 10th October 2004, Mr.Sarvesh Narkar who happened to be Vice President of BJP, Deogad Unit, had visited along with other BJP activist members with dummy machine to be used on the date of poll. Demonstration was given by them on the lines of campaign adopted by the Respondent No.1. The other person who had been named as having indulged in same activity is Mr.Sadashiv Ogale, who happens to be Zilla Parishad member of BJP, Deogad Unit. These affidavits, I would assume would form integral part of the Petition, even so, these affidavits would not be relevant with regard to the former part of Para 19 wherein it is mentioned that the Respondent No.1 himself, his election agent and other persons employed or working at the instance of Respondent No.1 or his election agent systematically campaigned and misrepresented the electors in areas where the Petitioner was likely to receive good response. It is common ground that neither Mr.Sarvesh Narkar nor Mr.Sadashiv Ogale were the election agent of the Respondent No.1. The affidavit makes no reference to Respondent No.1 himself having done the alleged campaign. As is

the case of the Petitioner, the said two persons were workers holding out as agents in connection with the election of the Respondent No.1 with his consent, then such specific case ought to have been made out in the Petition. It was further necessary for the Petitioner to make out a case that the result of the election insofar as Respondent No.1 is concerned, has been materially affected by the corrupt practice committed by these two persons as agents. As is well settled position, even if singular material fact is lacking, the Petition ought to fail being not in conformity with the requirement of Section 83(1) of the Act. Insofar as the latter part of the allegation, it is pointedly against Respondent No.1 and his election agent. The name of election agent is not mentioned, whereas, expression agent is used. Be that as it may, as no relevant material facts have been given as to the place, time, date and other matters including the source of information in the Petition in the context of this allegation. It is obvious that complete material facts are not provided to disclose the cause of action. In this backdrop, the Petition will have to be dismissed in

exercise of powers under Section 86(1) and Order VII Rule 11 of the Code. Indeed, it is also open for this Court to strike off Paragraph 19 from the pleadings being unnecessary, frivolous and vexatious, which may tend to prejudice, embarrass or delay the fair trial.

38. Insofar as Para 20 is concerned, that is bereft of any material facts. It merely states that by such fraudulent campaigning or misinformation canvassed by Respondent No.1, his election agent or other persons by consent of either the Respondent No.1 or his election agent, the Respondent No.1 has committed corrupt practice and has materially affected the results of the election, especially, in view of small margin of votes between them. It is seen that the Petitioner is not clear whether the consent is given in favour of any other person by the Respondent No.1 or by his election agent. Besides, the material facts to allege giving consent of Respondent No.1 or his election agent have not been stated at all. It is not stated as to in what manner the election result has been materially affected. No material facts to

indicate that position has been mentioned. Small margin of votes, by itself, cannot be sufficient to constitute cause of action. Something more was required to be stated which is lacking in this paragraph. Even if we were to read paragraphs 19 and 20 together, or for that matter, the Petition as a whole, the alleged corrupt practice stated by the Petitioner in these Paragraphs, all relevant material facts to disclose cause of action therefor are not mentioned in the Petition. The averments are short of statement of all relevant material facts to disclose cause of action to pursue the ground in question for declaring the election of Respondent No.1 as void. Accordingly, the Petition should fail and will have to be dismissed at threshold in exercise of powers under Section 86(1) read with Order VII Rule 11 of the Code. In any case, this Court will have to strike off these pleadings regarding the ground pressed into service by the Petitioner in question being unnecessary, frivolous and vexatious, which may tend to prejudice, embarrass or delay the fair trial.

39. The next ground for declaring the election

of Respondent No.1 as null and void, the Petitioner asserts that the Respondent No.1 or his election agent had created an atmosphere of terror all throughout the Constituency during the relevant period. That case can be discerned from paragraph 21 of the Election Petition. It is alleged that the Respondent No.1 indulged in corrupt practice within the meaning of Section 123(2) of the Act. We have already referred to the requirements of pleadings in the light of the decisions referred to earlier, so as to attract the provisions of Section 123(2) of the Act in the earlier part of this Judgment. Now I would proceed to analyse Paragraph 21 of the Petition and to consider whether the averments in this Paragraph discloses cause of action to proceed in the matter. In addition to Para 21, the Petitioner also relies on Paragraphs 5 and 6 of the Petition and part of Paragraphs 29 and 30 to contend that the Court should read the Petition as a whole and if so read, all the relevant material facts are stated which disclose cause of action. I have already opined in the earlier part of the Judgment, with reference to Paragraphs 5 and 6, or for that matter Paragraphs

29 and 30, will be of no avail to the Petitioner. The contents thereof are mere reproduction of the language of the Section. The only paragraph, therefore, which will have to be scrutinized closely is Paragraph 21, which reads thus:

> "21. The Respondent No.1, his election agent and other persons being the workers of the BJP-Shivsena alliance or hired by the Respondent No. 1 or his election agent had created an atmosphere of terror all throughout the said constituency. The areas and booths where traditionally the voting in favour of the BJP-Shiv Sena Alliance is low, are the areas and booth localities which were targeted in particular by the Respondent No. 1 and/or the people working for him or hired by him for that purpose. Few of the incidences which are duly reported by the Petitioner, his party workers and/or colleagues are following:
>
> [a] The personal assistant of the petitioner Shri Vinayak Bhatkar had been to Village Shirgao in Taluka Deogad on 12th October, 2004 i.e. for distribution of lists of electors and other material for representatives, polling agents in that area. He reached there very late i.e. at or around 1:45 a.m. on 13th October, 2004 when he was followed and trailed by few tough looking persons in two Trax Vehicles bearing registration No.3 MN-07-A-8479. When the driver of the car in which Shri Bhatkar was travelling realized this he immediately sped the car away however both these cars chased his, till Shri Bhatkar took his car to the Deogad Police Station. Hereto annexed and

marked as 'Exhibit C' is the true translation of copy of the Complaint lodged by Shri Bhatkar with the Deogad police station dated 13th October, 2004 at 3.45 a.m.

[b] In similar incident the cousin of the Petitioner, Mr. Sumant Narayan Wadekar along with some party workers was distributing polling lists, and other material to the representatives and polling agents of the petitioner, was travelling in Trax No. MH-07-8724 for Vijaydurg and rural area. They reached area known as Padel Canteen at or around 2.00 a.m. on 13th October, 2004. At that time 4-5 Cars forced them to halt opposite the Padel High school when the Sarpanch of Wade, Mr. Bhalchandra Mestry of the Shiv Sena Party along with other 40-50 unknown persons apprehended them and threatened them of dire consequences and deflated both the front tyres and the rear left tyre of their vehicle. In the mishap three persons accompanying him. Bashant Kambli, Dinesh Kambli and Vikas Wadekar ran away in fear and were missing for the entire day. Thereafter Mr. Wadekar some how managed to reach the Deogad Police Station and lodged a complaint, at or around 6.25 a.m. on 13th October, 2004. Hereto annexed and Marked as 'Exhibit D' is the true translation of copy of the complaint filed by Mr. Wadekar. The police have registered the complaint under FIR No. 44 of 2004.

[c] Another personal assistant of the petitioner one Mr. Pravin Jagannath Dalvi with the driver of the vehicle he during distribution of the lists and other material to the representatives and polling agents, were chased, their vehicle was forced to stop and were beaten up at or around 11.30 a.m. on 13.10.2004 at village Dabhole, Taluka-Deogad in front of the Respondent No.1 who was present there

Mr. Dalvi has lodged a complaint to that effect, with the Deogad Police Station being N.C. No.367. Hereto annexed and marked as 'Exhibit E' is the true translation of copy of the complaint filed by the Mr. Pravin Dalvi.

[d] Mr. Vinayak Bhatkar was again assaulted in presence of Mrs. Aboli Pednekar, wife of the Petitioner, who was in the car, and was beaten at village-Hindale, Taluka-Deogad, at or around 12:30 p.m. on 13th October 2004. The complaint was registered under and persons accompanying him were again assaulted at and were beaten at village. Hindule Taluka Deogad at or around 12.30 p.m. on 13th October, 2004. They have intimated the Police authorities accordingly and the police have registered a complaint under FIR 45/2004 by the Deogad Police Station under the provision of sections 143,147, 323, 504 and 506 of the Indian Penal Code. Hereto annexed and marked as 'Exhibit F' is the true translation of copy of the complaint filed by Mr. Vinayak Bhatkar.

[e] Mr. Chandrakant Jathar on 13/10/04 for leaflet distribution. The Police have registered a complaint under NC N0. 603 of 2004. Hereto annexed and marked as 'Exhibit G' is a true copy of the translation of the same.

[f] Mr. Vinayak Fatak was similarly beaten up alongwith others at Village Mithbao, Taluka Deogad at 3.00 p.m. on 13th October, 2004. Mr. Fatak has fired a complaint which was registered by the Deogad Police Station under FIR No. 46 of 2004, under the provisions of sections 143, 147, 323, 504, 506 and 427 of the Indian Penal Code.Hereto annexed and marked as 'Exhibit H' is true translation of copy of the complaint filed by the Mr. Vinayak Fatak. By these and other acts of

> physical violence, intimation threats causing actual physical injuries and or threats of any intended physical injury the respondent No.1, his agents and other persons under his supervision or consent have attempted to interfere directly or indirectly with the free exercise of the electoral rights of the people by undue influence and have committed gross corrupt practices under the provisions of the Act. The Petitioner craves leave to refer to and rely upon the various complain s filed at the police station in the said constituency.

40. As mentioned earlier, in the first place, it is alleged that the Respondent No.1, his election agent and other persons being the workers of Shivsena-BJP alliance or hired by the Respondent NO.1 or his election agent had created an atmosphere of terror all throughout the Constituency. It is then stated that the areas and booths where traditionally the voting in favour of the Shivsena-BJP alliance is low, were targeted by the Respondent No.1 and/or people working for him or hired by him for that purpose. The assertions made in this part of Para 21, even if accepted as it is, will be of no avail. In the first place, there is no clear case made out by the Petitioner as to whether he is alleging commission of

offending act by the Respondent No.1 or his election agent. Besides, in the latter part of the same paragraph, no material fact is stated about consent of Respondent No.1. All that is said is that people working for Respondent No.1 or hired by him indulged in the offending activity. No specifics such as how, where, when, the place or the source of information have been mentioned in this part of the Paragraph. The areas which are referred to low voting areas for the Shivsena-BJP have not been specified. The names of people working for the Respondent No.1 have not been mentioned. No details are mentioned as to who had appointed them, on whose instructions, in what manner and the place where they were expected to carry on such activity. Nor any source of information has been disclosed in the Petition. Indeed, the Petitioner has then proceeded to refer to some of the incidents which are duly reported by the Petitioner, his party workers and/or colleagues.

41. The first instance is referred to in Clause (a) of Para 21. It is stated therein that

Personal Assistant of the Petitioner Shri Vinayak Bhatkar had visited village Shirgao, Taluka Deogad on 4th October 2004 for distribution of list of electors and other material for representatives, polling agents in that area. It is stated that he reached the said Village late night at 1.45 a.m. on 13th October 2004 when he was followed and trailed by few tough looking persons in two Trax Vehicles. It is then stated that when the driver of Bhatkar's vehicle realized the problem, he sped the car away and they rushed to Deogad Police Station. In this Paragraph, no material facts such as who were those few tough looking persons following Bhatkar allegedly hired by Respondent No.1 or otherwise; and what was the basis to connect those persons to Respondent No.1. It is nowhere mentioned that the said persons were acting with the consent of Respondent No.1. In this paragraph, even the source of information has not been clearly spelt out. There is no mention as to how the act alleged was such that it amounted to direct or indirect interference or attempt to interfere with the free exercise of any electoral right. There is also no mention as to how the

result of the election insofar as the returned candidate has been materially affected by such corrupt practice indulged by said unknown persons. Even if clause (a) was to be liberally read to mean that the complaint which has been annexed at Exhibit C lodged with the Senior Inspector of Police, Deogad by said Bhatkar should be read as forming integral part of this Petition, all that is mentioned in the said complaint is that at the relevant time, said Bhatkar had left for Shirgao to meet the polling agents of Nationalist Congress Party, when some workers of opposition party suspiciously followed him and his car from Jamsande Bazarpeth in two trax vehicle. There is not even a suggestion that those persons were acting with the consent of the Respondent No.1 or his election agent. Only suspicion that they belonged to opposition party is expressed. There is no mention as to how that activity was intended to directly or indirectly interfere with the free exercise of any electoral right. The complaint mentions that some workers of opposition party were noticed suspiciously following said Bhatkar. Besides, the Respondent No.1, other five candidates also

contested. There is no mention in the Petition that the workers belonged to the party of Respondent No.1 only. Viewed in this perspective, it will necessarily follow that Petition fails to set out complete material facts to disclose cause of action in relation to the incident stated to have taken place on 13th October 2004.

42. The position is no different in respect of the next incident referred to in clause (b) of Para 21. It is alleged that the cousin of Petitioner Mr.Sumant Narayan Wadekar along with some party workers was distributing polling list and other materials to the representatives and polling agents of the Petitioner. He was travelling in trax for Vijaydurg and rural area. When he reached area known as Padelkhand at or around 2.00 a.m., some four-five cars forced them to halt opposite the Padel High School when it was noticed that the sarpanch of Wade Mr.Bhalchandra Mestry of Shivsena party along with 40 to 50 unknown persons apprehended and threatened them of dire consequences and deflated both the front tyres and the rear left tyres of their vehicle. It is stated

that somehow the persons accompanying him managed to reach Deogad police Station and lodged complaint at 6.25 a.m. Once again, the relevant material facts to disclose the cause of action have not been set out. There is no mention how the activity of Bhalchandra Mestry of Shivsena party assuming it to be true, was with the consent of the Respondent No.1. There is no mention as to how the activity in question was intended to directly or indirectly interfere with the free exercise of any electoral right. The offending activity is ascribed to persons other than the election agent of the returned candidate. The material facts as to how that offending act has materially affected the election result of the Respondent No.1 are not mentioned. Assuming that the complaint which is annexed to the petition as Exhibit D lodged by Sumant Wadekar is to be considered as integral part of the Petition, even the contents of the said complaint does not spell out any of the relevant material facts. Nothing has been ascribed to Respondent No.1 either about his direct or indirect involvement or consent. For the same reasons, which apply to earlier Paragraph already analysed,

even this part of Paragraph 21 will have to be held as lacking complete material facts to disclose cause of action.

43. In Clause (c) of Para 21, the Petitioner then refers to another incident of 13th October 2004 wherein, one Mr.Pravin Jagannath Dalvi, P.A. of the Petitioner was travelling in a vehicle along with driver for distribution of the list and other materials to the representatives and polling agents. It is stated that they were chased and their vehicle was forced to stop and beaten up at about 11.30 a.m. at Village Dabhole, Taluka Deogad in front of Respondent No.1 who was present there. It is then stated that Mr.Dalvi has lodged a complaint to that effect. Assuming that the allegation made in this paragraph that the Respondent No.1 was present at the relevant time at the scene of offence is to be accepted as it is, mere presence on the scene does not mean that the Respondent No.1 had consented for the alleged act. There is nothing in this Paragraph to even remotely suggest that the persons who were assaulting said Pravin Dalvi were workers of Respondent No.1. No

overt act is attributed to Respondent No.1. Besides, no assertion is made as to how the alleged activity resulted in direct or indirect interference with the free exercise of any electoral right or how the result of the election of the returned candidate has been materially affected by the said corrupt practice. Even in respect of this incident the complaint filed before Deogad Police Station as annexed to the present Petition as Exhibit E, if it is to be assumed that the said complaint forms integral part of the Petition, it is seen that in this complaint, there is absolutely no reference to the presence of Respondent No.1 on the scene of offence. All that is mentioned is that BJP workers intercepted his vehicle near Dabhole booth and assaulted him. If it is so, the source of information as to on what basis the Petitioner alleges that Respondent No.1 was seen on the scene, is not stated. Besides, from the complaint, it is obvious that the same has been lodged after the date of polling and election result. Suffice it observe that even this part of Para 21 lacks complete material facts to disclose cause of action.

44. The next incident referred to in clause (d) of Para 21 is relating to assault on Vinayak Bhatkar in the presence of Mrs.Aboli Pednekar, wife of Petitioner who was in the car. That incident is stated to be of 13th October 2004 at around 12.30 p.m. Even if the statement made in this Paragraph is to be accepted as it is, for the reasons already recorded in relation to earlier Paragraphs, it will have to be held that even the averments in this Paragraph are bereft of any material facts, much less, complete material facts to disclose cause of action. In other words, same reasons would apply in relation to the averments in this Paragraph to conclude that complete material facts to disclose cause of action are not stated. In this paragraph reference is made to complaint Exhibit F lodged by Mr.Vinayak Bhatkar. Even if the contents of the said complaint were to be treated as integral part of the Petition, all that is mentioned is that about 25 to 30 workers of Shivsena-BJP party in Mithbao Village came at the place, where Bhai Nare of Shivsena Party called the complainant near him and while the said Bhai was discussing with the

complainant about election, seven named persons and other unknown 7 to 8 persons suddenly started beating Kishore Sawant and other persons. There is no mention of the fact that the offending activity was with the consent of Respondent No.1 or his election agent. Besides, no material fact can be culled out as to in what manner the Respondent No.1 or his election agent had consented for the said activities. In the circumstance, it is held that the averments in this Paragraph are bereft of any material facts to constitute any cause of action.

45. The next instance stated is again of 13th October 2004. It is stated in clause (e) of Paragraph 21 that Mr.Chandrakant Jathar on 13th October 2004 for leaflet distribution. The police have registered a complaint. These are the two sentences in the entire paragraph. In the first place, the same are incoherent and no material fact can be culled out even on reading the sentences separately or together. Reference is made to some leaflet and distribution of some leaflet. The contents of the leaflet are not detailed. If the case of the Petitioner is that the leaflet

contained offending articles, then it was obligatory on the part of the Petitioner to either spell out the contents of the leaflet in the Petition or at least to annex the leaflet to the Petition. That has not been done. The consequence thereof, I shall consider a little later while dealing with issue No.1. This Paragraph makes reference to document Exhibit G. The same is the statement of Chandrakant D.Jathar. Since the contents of the statement are not mentioned in the Petition, it will have to be assumed that the same forms integral part of the Petition. On going through the said document, all that can be discerned is that a complaint is registered about the fact that workers of local BJP candidate distributed leaflets. In the said leaflet, party of the complainant was mentioned as opposition (adversary). It is then stated that the leaflet indirectly tantamounts to defamation of complainant's party candidates. Besides, it is in violation of breach of Code of Conduct to distribute any leaflet on the polling day, for which, a legal action be taken against Atul Kalsekar. There is no mention even in this

complaint that the act of Atul Kalsekar or that of any other worker of BJP stated to be offending, was with the consent of the Respondent No.1 or his election agent. Nor even remote mention is made about other relevant material facts so as to constitute corrupt practice. Understood thus, it will have to be held that the Petition lacks complete material particulars to disclose cause of action, for which, the same will have to be dismissed at the threshold.

46. The last incident is in clause (f) of Para 21 relating to incident again of 13th October 2004 at 3.00 p.m. at Village Mithbao, Taluka Deogad. One Mr.Vinayak Fatak was stated to be beaten up along with others. It is stated that said Fatak filed a complaint which was registered with Deogad Police Station. Copy of the complaint is annexed as Exhibit H. For the reasons already mentioned while dealing with the earlier paragraphs, adopting the same to avoid repetition, I would conclude that even this part of the Petition lacks complete material facts disclosing cause of action. Even if the complaint of Fatak which is annexed as Exhibit

H is read as forming integral part of the Petition as the contents thereof are not spelt out in clause (f), even then on reading the said complaint, it is seen that complete material facts to disclose cause of action in respect of the alleged corrupt practice is not spelt out. The complaint merely mentions the names of BJP party workers who were involved in the incident and the time and place thereof. It is stated that Ajit Phatak assaulted the complainant and other details of the incident are given. There is no mention that the incident took place with the consent of the Respondent No.1 or his election agent. There is also no mention that the incident resulted directly or indirectly in interfering with the free exercise of any electoral right or that the result of the election insofar as the Respondent No.1 is concerned has been materially affected by said act. Accordingly, even this part of the paragraph will be of no avail to the Petitioner. Even if the latter part of paragraph 21 was to be read along with other paragraphs, all that is mentioned therein, is that by such physical violence, intimidation, threat causing actual physical injuries and/or threats of

any intended physical injury, the Respondent No.1, his agents and other persons under his supervision or consent have attempted to interfere directly or indirectly with the free exercise of electoral rights of the people by undue influence and have committed gross corrupt practice under the act. This is mere reproduction of the language of the Section. The material facts relating to consent are completely lacking. Interestingly, in this paragraph, it is alleged that Respondent No.1, his agents and other persons under the supervision or consent have attempted to commit the act. The Petitioner is not certain whether the Respondent No.1 himself, or his agents and other persons committed the alleged act; nor the Petitioner is certain whether those activities indulged by the other persons was under the supervision or with consent of the Respondent No.1. There is qualitative distinction between supervision and consent. The material facts as to in what manner Respondent No.1 supervised the incident is also not forthcoming. In the circumstances, it will have to be held that the Petition lacks complete material facts to disclose cause of action with regard to

the alleged corrupt practice referred to in paragraph 21. As a consequence, the Petition deserves to be thrown out at the threshold in exercise of Section 86(1) read with Order VII Rule 11 of the Code. In any case, the pleadings in respect of stated corrupt practice will have to be struck out from the pleadings being unnecessary, frivolous and vexatious, which may tend to prejudice, embarrass or delay the fair trial.

47. That takes me to the contents of Paras 22, 23 and 24 of the Petition which read thus :

> "22.The Respondent No.1 had realised that the opinion of the electors in the said Constituency generally, was clearly in favour of the petitioner, and in any case against the Respondent No.1. Therefore the Respondent No.1, resorted to activities amounting to or deemed to be corrupt practices under the Act and/or started adopting illegal and unfair against the petitioner. The petitioner came to know at or around 6.00 a.m. 13th October, 2004 that the Respondent No.1 has printed posters and leaflets with the heading 'Bhadotri Gundancha Utichya Karyalayavar Halla', that means Hired Goons Attack the [BJP- Shiv Sena] alliance office. Narrating a totally false incidence, which to the knowledge of the

Respondent No.1 had not happened at all, of an alleged attack by the Petitioner's worker's on the car of the Respondent No.1, alleged and injuries caused to his representatives as named therein viz., Mr. Babu Ghadi and Mr. Bala Golam. This concocted and false story of alleged attack was printed on posters and leaflets and the same pasted and/or being were distributed freely, all over the constituency. Hereto annexed and marked as "Exhibit I and J" are the true translation of copies of the poster and leaflet respectively. The poster and leaflet appears to have been printed at M/s. Ameya Printing Press at Jamsande, Taluka Deogad, and published by Mr. Atul Kalsekar, who is the General Secretary of the Sindhudurg District BJP who was in charge of the campaign of the Respondent No.1. All the publicity material for Respondent No.1 was published by Atul Kalsekar. Hereto annexed and marked as 'Exhibit JA, JB, and JC' are the affidavits of three voters from the said constituency. The posters were pasted in all important and prominent places in the said constituency and the leaflets were openly and freely distributed around all the 176 booths in the said constituency by the Officer bearers of the BJP and the Shiv Sena when the Petitioner election agent learnt about the publication and distribution of the posters and the leaflets he placed the same on record by his letter dated 13th October, 2004 addressed to the Returning officer, with copy thereof addressed to the Deogad police station. Hereto annexed and marked as 'Exhibit K' is the true copy of the translation of the letter dated 13th October, 2004 from Mr. Yogesh Chandoskar to the Returning officer, Deogad Assembly Constituency.

23.The Petitioner's election agent Mr. Yogesh Chandoskar informed the authorities

abut the false and illegal campaign being carried out by on behalf of the Respondent No. 1 in the said constituency. Mr. Chandoskar filed a complaint with the Deogad Police Station at or around 8:00 a.m. On 13th October, 2004 recorded as N.C. No. 382/2004. Similarly an office bearer of the NCP, Sindhudurg District, Mr. Chandrakant Jathar filed a complaint with the Kankavli Police Station at or around 5:00 p.m. on 13th October, 2004 which is recorded as N.C. No. 603/2004. By another complaint recorded as N.C. No. 397/2004 at the Malvan Police Station, at or around 3.15 p.m. on 13th October, 2004 the activities of the Respondent No.1 regarding pasting of the posture and/or distribution of the leaflets was placed as well as the distribution of the leaflets were reported to the concerned police officers on duty in the said constituency as well as the booth officials by the representatives of the petitioner. The Petitioner craves leave to refer to and rely upon the same as and when produced. The petitioner states that he was shocked to notice that in the news reporting on Alfa TV (Marathi) at the behest of Respondent No.1, the alleged incident was reported to have actually occurred. The Petitioner through his election agent reported this to the Returning Officer Deogad Assembly Constituency by a fax. Hereto annexed and marked as 'Exhibit L' is a copy of the letter dated 13/10/04 alongwith fax receipt. I crave leave to refer to and rely upon the facsimile message as and when produced. The respondent No. 1 has printed and published the said poster without printing the name and address of the printer and the publisher thereof, and has therefore violated the mandate of the section 127A of the Act.

24.The alleged incident mentioned in the said leaflets and posters is totally

> imaginary and false as never occurred or happened. It is evident from the fact that, the Deogad police station is only few meters away from the office of the Respondent No.1 where the said incident was alleged to have happened at 3.30 a.m. but the complaint was recorded only at 6.00 a.m. on 13th October, 2004 as after thought. This is a very serious attempt on part of the Respondent No.1 to indulge in conspiracy of a false propaganda and the same amounts to corrupt practice under the Provisions of the Act besides the same being violation and/or breach of the directions contained in the Code of Conduct as continuation of negative campaign, as when the actual, permitted campaigning came to an end on Monday 11th October, at 5.00 p.m. and all kind of campaigning and/or distribution of any publicity material is totally prohibited thereafter. The Petitioner craves leave to refer to and rely upon the said complaints as and when produced. The respondent No.1 has published or caused to publish a statement of fact which he knew is false in relation to the alleged conduct of the petitioner being a statement reasonably calculated to prejudice the prospects of the Petitioner’s election and has therefore committed corrupt practices under the provisions of the Act.

48. These Paragraphs deal with another set of corrupt practice allegedly committed by the Respondent No.1.

49. In paragraph 22, it is stated that the Respondent No.1 had realized that the electoral

opinion was not in his favour generally, instead, favoured the Petitioner. It is for that reason, Respondent No.1 resorted to corrupt practice. It is stated that on 13th October 2004 at 6.00 a.m., Respondent No.1 had printed posters and leaflets with the heading 'Bhadotri Gundanchya Yutichya Karyalayavar Halla', which means that hired goons attacked Shivsena-BJP alliance office. The allegation is specific against the Respondent No.1 having printed posters and leaflets. The so-called posters and leaflets printed by the Respondent No.1 are not annexed to the Petition. Indeed, it is mentioned that the said printed posters or leaflets narrate a totally false incident, which to the knowledge of the Respondent No.1 had not happened at all. The incident is of alleged attack by the Petitioner's workers on the car of the Respondent No.1 causing injuries to his representatives Mr.Babu Ghadi and Mr.Bala Golam. According to the Petitioner, this is a concocted and false story of alleged attack which was printed on posters and leaflets and the same were pasted and/or being distributed freely all over the Constituency. As mentioned earlier, the posters and leaflets printed

"in the name of the Respondent No.1" is not annexed. In any case, nowhere it is mentioned that on what basis the Petitioner has jumped to the conclusion that the Respondent No.1 had printed alleged posters and leaflets himself. Besides, there is no mention as to who had seen the Respondent No.1 himself distributing the posters and leaflets and pasting the same throughout the Constituency. The place where such activity was going on or the time and other such details which are relevant material facts have not been stated. Reference is made to Exhibit I and Exhibit J. Exhibit I is translated copy of some handbill. The original of this document is not placed on record. This handbill nowhere mentions that it has been printed by Respondent No.1. In the Petition, the description of the document is given as poster, unlike in the case of Exhibit J produced on record described as leaflet. The Marathi version thereof can be ascribed to document at page 137. That document mentions that it was published by Shri Atul Kalsekar and printed at Ameya Printing Press, Jamsande. Insofar as document described as poster Exhibit I is concerned, name of the Petitioner is

purportedly referred to therein as Kuldeepak. There is no mention in the Petition that reference as Kuldeepak is to the Petitioner himself. In any case, the allegation in this Paragraph will have to be held as incomplete statement of material facts. There is no mention in the Petition as to how the personal character of the Petitioner was attacked by this poster or leaflet as the case may be. In the latter part of Paragraph 22, reference is made once again to poster and leaflet. It is stated that the same have been printed at Ameya Printing Press at Jamsande, Taluka Deogad and published by one Atul Kalsekar, who was the General Secretary of the Sindhudurg District BJP, who was stated to be in charge of campaign of Respondent No.1. It is common ground that Atul Kalsekar is not the election agent of the Respondent No.1. No material fact indicating consent of Respondent No.1 for printing, publishing or for that matter, distribution is even remotely mentioned. Though it is alleged that posters were pasted on all important and prominent places in the Constituency and the leaflets were openly and freely distributed around all the 177 booths by the Office bearers of

the BJP and Shivsena; at this stage, it is relevant to point out that the grievance of the Respondent No.1 was that the Petition describes the documents differently namely as poster and leaflet. During the argument, Counsel for the Petitioner submitted that the two expressions have been used loosely and can be interchanged. However, it is doubtful whether argument of the Petitioner can be countenanced. In the Petition, very clear reference is made to the document as poster and leaflet-while annexing the documents Exhibits I and J, it is specifically mentioned as "posters" and "leaflets" respectively. Thereafter, even in the latter part of same paragraph, description of the documents is given differently as "posters" and "leaflets". This becomes relevant as the grievance of the Respondent No.1 is that the original of the leaflet alone is produced which is part of Exhibit JA, JB and JC at pages 137, 141 and 145. Whereas, the original of poster is not produced at all. I am also inclined to accept the grievance made by the Respondent No.1 that the trial of election petition is in the nature of quasi-criminal proceedings. In the Petition especially relating

to ground of corrupt practice, the charge should be specific. The documents on which the election Petitioner intends to rely with reference to particular charge will have to be identified very clearly and the Respondent cannot be left to wade through the entire record to collate the documents and assume for himself that the document in the compilation must be in relation to some charge, which he has to deal with. In the present case, that grievance arises because the Petitioner at the time of hearing, referred to documents at pages 137, 141 and 145 which are identical in vernacular language, the contents whereof corresponds to translation copy of leaflet Exhibit J at page 137.

50. Be that as it may, reverting to contents in Para 22, it is stated that the Petitioner's election agent learnt about the publication and distribution of the posters and the leaflets. He entered into communication with the Returning Officer on 13th October 2004. Copy of that representation is marked as Exhibit K at page 147. However, this communication makes no reference to the document descried as poster Exhibit I. Suffice

it to observe that the allegation contained in this paragraph do not set out complete material facts to disclose cause of action.

51. Insofar as Paragraph 23 is concerned, the same refers to the successive complaints lodged by the election agent of the Petitioner with Deogad Police Station about the activities of Respondent No.1 regarding pasting of the posters and/or distribution of the leaflets. Copies of the said complaints are not placed on record. The contents of the said complaints are not clearly spelt out. In that case, the complaint will have to be treated as integral part of the Petition and for not annexing the same, certain consequences would follow, which I will advert to while dealing with Issue No.1. Petitioner has referred to crave leave and rely upon the complaint. In Para 23 of the Petition, all that the Petitioner alleges is that Respondent No.1 was indulging in activity of pasting of posters and distribution of the leaflets. The material facts in relation to that have not been provided. The time, place and such other details including the source of information

have not been spelt out. Interestingly, there is no assertion about falsity of the incident or that the statement of fact mentioned in the publication was false to the knowledge of the Respondent No.1 and he knew it to be false or did not believe it to be true. In absence of such assertion, complete material facts disclosing cause of action are lacking. For the aforesaid reasons, even this para of the Petition cannot be sustained and the Petition will have to be thrown out at the threshold.

52. The Petitioner then refers to some news report which had appeared in Alfa T.V.(Marathi) at the behest of Respondent No.1. It is stated that the alleged incident was reported to have actually occurred. Once again, no details are given as to what were the exact contents of the news report, when the said news report had appeared and who was responsible for giving the said news report in the form it appeared or clearly stating falsity of the incident and alleging that the statement given in the news item was false and the Respondent No.1 knew that it was false or did not believe it to be

true. Assuming that some other person was responsible for giving that statement, there is no allegation in the Petition that it was done with the consent of Respondent No.1. There is no assertion as to in what manner the personal character or conduct of the Petitioner has been affected by that report or that the said statement was reasonably calculated to promote the election prospects of the Petitioner. If such is the state of pleadings, it necessarily follows that the Petition lacks complete material facts to disclose cause of action, for which reason, the same will have to be dismissed at the threshold.

53. Once again, at the end of Paragraph 23, the Petitioner has reiterated that Respondent No.1 printed and published the posters without printing the name and address of the printer and the publisher thereof and therefore violated the mandate of Section 127A of the Act. As mentioned earlier, the original poster wherein the name of the printer, publisher does not appear has not been produced. Only English translation has been produced. Perhaps, which is marked as Exhibit I

described as poster. Thus understood, considering paragraphs 22 and 23 separately or together, the Petition does not contain complete material facts to disclose cause of action, for which reason, the same will have to be dismissed at the threshold in the exercise of powers under Section 86(1) and Order VII Rule 11 of the Code. Indeed, it is also open for this Court to strike off the pleadings being unnecessary, frivolous and vexatious, which may tend to prejudice, embarrass or delay the fair trial.

54. In Para 24, it is stated that the leaflets and posters are totally imaginary and false. To make good this assertion, it is stated that the Office of Respondent No.1 is only few meters away from Deogad Police Station, for which reason, the happening of incident at 3.30 a.m. recorded only at 6.00 a.m. was highly improbable and afterthought. It is then stated that this is serious attempt on the part of Respondent No.1 to indulge in conspiracy of a false propaganda and the same amounts to corrupt practice, as the campaigning ended on Monday 11th October 2004 at

5.00 p.m. The Petitioner then craves leave to refer to and rely upon the complaints lodged by the petitioner in this respect. In the first place, the allegation in Para 24 does not state complete material facts to disclose the cause of action. Besides, the contents of the complaint on which the Petitioner seeks to rely are not set out for which reason, it will have to be assumed that the same forms integral part of the Petition. As the same is not annexed, the consequences thereof will be dealt with while dealing with issue No.1. In the latter part of Para 24, it is stated that the Respondent No.1 has published or caused to publish a statement of fact, which he knew is false in relation to the alleged conduct of the Petitioner being a statement reasonably calculated to prejudice the prospects of the Petitioner's election and therefore committed corrupt practice. This is only reproduction of the Section. The Petitioner was expected to state details as to how, when and where, the Respondent No.1 has published the offending documents. The original document, so-called published by the Respondent No.1, has not been annexed to the Petition. Assuming that

reference made to the document in Exhibit I described as poster, which has been published by the Respondent No.1, there is no mention as to how the same affects the personal character or conduct of the Petitioner and is a statement reasonably calculated to prejudice the prospects of his election. The material facts in that behalf are not specified. No details are provided as to where, when, how and from whom the offending document was got published by the Respondent No.1 and the source of such information. It is well settled that even if single material fact is lacking, the petition deserves to be thrown out at the threshold. In other words, even if Paragraphs 22 to 24 were to be read separately or conjointly will make no difference because in none of the Paragraphs complete material facts to disclose cause of action have not been set out for which reason, the Petition will have to be dismissed at the threshold in exercise of powers under Section 86(1) and Order VII Rule 11 of the Code. Indeed, it is also open for this Court to strike out the pleadings being unnecessary, frivolous and vexatious, which may tend to prejudice, embarrass

or delay the fair trial.

55. That takes me to another set of corrupt practice alleged by the Petitioner, as can be discerned from para 25 of the Petition. It is alleged that the Respondent No.1 has committed corrupt practice within the meaning of Section 123(8) read with Section 125A. Para 25 reads thus:

> "25. The native place of the Petitioner is Village Kunkeshwar which is located in Mithbao Panchayat Samittee constituency area of the Deogad Taluka. The Petitioner is not only well known in this area but is also very popular and therefore every one was sure that the petitioner will register good poling here and will register large margin on all the booths. The Respondent No.1 in order to reduce the margin expected by the Petitioner in this area and in order to present voter turnout in the booth falling the this area created an atmosphere of terror and created have by his hirelings on the day of polling. As expected the voter turnout at all the booths in this area was very good during the state of the polling time i.e. soon after 7.00 a.m. and especially the electors known to be supporters of the Congress-NCP front were out in good numbers. When this news reached the Respondent No.1 he instructed one Mr. Mahadeo N. Naare, a Shiv Sena supporter alongwith his 20-25 accomplices viz. Amol Vijay Loke, Ajit Bhau Phatak, Shailesh Loke, Prasad Shashikant Gaonkar, Ashwin Atmaram Phatak, Mangesh Shirwalkar,

Santosh Daji Loke and other to attack the said booth and accordingly the said Mr. Nare with his aids attacked the booth representatives and other party workers of the petitioner near the polling booth soda water bottles and assaulted Narayan Mohan Jogal, Vidya, Sunil Shantaram Phatak, Tanaji Suryakant Padwal, Vidya Jagannaath Jogal, Sadanand Vishnu Chanchankar, Shyamsunder Anant Parkar, Vinayak Atmaram Phatak, Rupali, Shamsunder Parkar and others. They started attacking and assaulting all the electors visiting the polling stations and created an atmosphere of terror and threat, on approaching areas to the polling stations in such manner with the result that the polling in this area completely stopped after 3.30 p.m. the representatives of the petitioner did register a complaint to the police station however the area was not attained to by the Police. The Petitioner craves leave to refer to and rely upon the complaint filed and the FIR No. 45 of 2004 registered with the Deogad police station dated 13th October, 2004 and action take thereon. Similar incidences reported at various other polling in the said constituency. Hereto annexed and marked as 'Exhibit LL' is the affidavit of one of the voters who was not allowed to vote because of the threats meted out and who were forced to return without casting their vote, by the men of the Respondent No.1. By these acts of Respondent No. 1 either himself through his agents, workers has indulged in coercing intimidating or threatening directly or indirectly the voters and has prevented them from going to the polling station to cast their valuable votes and has thus committed an offence amounting to corrupt practice under the provisions of sec. 123[8] read with 135A of the Act."

56. The fulcrum of the allegation is that the Respondent No.1 in order to reduce the margin expected by the Petitioner in the concerned areas, created an atmosphere of terror by his hirelings on the day of poling. It is stated that Respondent No.1 instructed one Mahadeo N.Nare, a Shivsena supporter to reach at the spot along with 20-25 accomplices to attack the concerned booths. Those instructions were translated into action by Mr.Mahadeo Nare and his associates, thereby causing atmosphere of terror and threat near the polling station. As a result of that, the polling in the area completely stopped after 3.30 p.m. It is stated that the Petitioner registered a complaint to the Police Station which was not attended. The Petitioner craves leave to rely on the said police complaint. It is stated that several incidents were reported at other police stations. Affidavit of one of the voter has been annexed to support that allegation. At the end, it is stated that the Respondent No.1 either himself, through his agent or workers had indulged in coerced, intimidated or threatened directly or indirectly the voters and had prevented them from going to the polling

station to caste their valuable votes, thereby, committed an offence amounting to corrupt practice. The material facts as to the source of information about the factum of the Respondent No.1 instructing Mr.Mahadeo Nare to indulge in the alleged activity are, however, lacking in the Petition. Besides, the contents of the complaint are not spelt out, which means the same became integral part of the Petition. Besides, the relevant material facts as to whether the Respondent No.1 himself was present on the scene or some other persons indulged in that activity is not stated. Moreover, material fact regarding consent of the Respondent No.1 is also lacking. Indeed, a general statement is made at the end of the paragraph, which, however, is reproduction of the language of the Section. In the Petition, reference is made to incidents reported at various other places, but no relevant information is given in the Petition as to who had indulged in those offences, when, where, in what manner and on whose instructions, method employed and the source of information. There is no allegation in the petition that on account of those activities referred to in Paragraph 25, the result

of the election insofar as the Respondent No.1 is concerned has been materially affected. If it is so, even this Paragraph under consideration will be of no avail and for the view, I have already taken earlier, the Petition will have to be dismissed at the threshold in exercise of powers under Section 86(1) and Order VII Rule 11 of the Code as lacking complete material facts to disclose cause of action. It is open to this Court, therefore, to strike off the subject pleadings being unnecessary, frivolous and vexatious, which may tend to prejudice, embarrass or delay the fair trial.

57. That takes me to Paragraph 26 of the Petition. The same reads thus :

> "26. In addition to these acts amounting to corrupt practices under the act the Respondent No.1 continued to violate and/or commit breaches of the Code of conduct and the directions of the election in said constituency. The Respondent No.1 had applied for and was given permission, as duly required, in respect of two election offices one situated at Jamsande and the other at village Padel. Beyond this the Respondent No.1 had not applied for and was not allowed to have any other election office. Despite this the Respondent No.1 some time in the last week

> of September 2004 opened an Election Office of Village -Tarale, Taluka Deogad and operated from there till the result was declared. The petitioner's election agent Mr. Yogesh Chandoskar complained to the Returning officer, Deogad, on 10th October, 2004 about this however no action was initiated against the Respondent No.1 in respect thereof. Hereto annexed and marked as 'Exhibit M' is copy of true translation of the complaint."

58. Counsel for the Respondent No.1, in my opinion, justly argued that even if the facts alleged in this Paragraph are accepted as it is, it is neither the case of corrupt practice nor a ground to set aside election. Counsel for the Petitioner has not been able to dispute the correctness of this submission. The allegation is that the Respondent No.1 opened an election office at Village Tarale, Taluka Deogad and operated from there till the results were declared without applying for such permission. In the circumstances, assertions in this Paragraph will be of no avail to the Petitioner. The same will have to be strike off from the pleadings being unnecessary, frivolous and vexatious, which may tend to prejudice, embarrass or delay the fair trial.

59. That takes us to Paragraph 27 of the Petition. The same reads thus:

> "27. On 4th October, 2004 in the Market place of Jamsande Taluka Ratnagiri a public meeting was organised by respondent No.1 for the campaign which was attended interalia by the following persons who were present on the dais:
>
> 1. Shri Narayan Rane- Leader of the Opposition Legislative Assembly (Shiv Sena) 2. Shri Suresh Prabhu-Member of Parliament, Rajapur (Shiv Sena) 3. Shri Appa Gogate-Ex MLA from Deogad (BJP) 4. Shri Madhav Bhandari-District President BJP 5. Shri Sanjay Padte-District Chief, Shiv Sena 6. Shri Atul Kalsekar-District General Secretary-BJP. The meeting commenced at about 4.00pm. It was attended by about 5000 persons. The meeting was addressed by the Respondent No.1, Madhav Bhandari, Vinayak Mithbaokar, Vaibhav Bidaye, Aba Arekar, Shri Suresh Prabhu and Mr. Narayan Rane. The speeches made by all the persons including the speech made by Mr. Narayan Rane were delivered with the consent of and in accordance with the systematic campaign designed by the Respondent No.1, against the petitioner. Mr. Rane who spoke last made clear attempt to tarnish the image of the Petitioner as a educated and cultured person and labelled him as a goonda of Dagdi Chawl, the infamous den of the alleged underworld person Mr. Arun Gavali of Mumbai. Mr. Rane made damaging and defamatory and slanderous remarks against the petitioner which are totally false to the knowledge of Mr. Rane and respondent No.1. Mr. Rane referred to the

Petitioner as an extortionist and cautioned the audience against voting for the petitioner as it will have severe effect on the tranquility and peace of the Deogad area. The speech of Mr. Rane was widely reported in the newspapers which are in circulation in Sindhudurg District. The Sindhudurg Ratnagiri Times, a marathi daily with highest circulation in Sindhudurg District which reported the proceedings of the meeting, next day, i.e. edition of Sindhudurg dated 5th October, 2004 with a focus on Mr. Rane's speech. The speech of Mr. Rane as reported interalia indicated the following: "IT IS NOT A DAGDI CHAWL" .... I desire development of Deogad, therefore tell Pednekar of NCP that it is not 'Dagdi Chawl'. Pednekar is not concerned with the development of Deogad. His path is wrong. Remind Pednekar that Deogad is God's own Village."

"YOU WILL RECEIVE A SHOCK IF BUTTON IS PRESSED". The NCP has brought this watch (Pednekar) from the Dagdi Chawl. But it is closed. Give such a margin from the Deogad Assembly Constituency that this watch should break. Press the button of Lotus with your pious finger, but remember if you press the button of watch, catastrophe shall befall on you and you will receive a shock and he cautioned them that we will not be responsible for that ...." The election agent of respondent no. 1 repeatedly indulged in a conversing and misleading the voters by indulging in propaganda to the effect that the voters will receive a shock if the button at serial no. 2 was pressed. The name of the petitioner figured at serial no. 2 only blared paper. The voters were also told by the said election agent that if the top right button was pressed by the voters the electronic voting machine would get activated. The name of the respondent no. 1 appeared at serial no. 1 on the

said machine.

The speech of Mr. Rane as reported in the other prominent daily 'Tarun Bharat' which also published and reported the proceedings of the meeting with focus on the details of the speech of Mr. Rane in their edition dated 5/10/04 interalia indicating the following 'DEOGAD IS NOT A DAGDI CHAWL'. ..... One who doesn't know about Deogad in last five years has been nominated by the NCP. Congress has done mockery of the Assembly Constituency. Deogad is not Dagdi Chawl. How a demon (Pednekar) is relevant in God's land like Deogad. They could not find a suitable candidate in Konkan therefore they have fielded an extortionist (Pednekar) against an educate person like Advocate Gogate, and have ditched the people..."

"TAKE CASH BUT VOTE FOR BJP" ..... If the Opponents offer cash, then take it and vote for Lotus. The cheques issued by Kuldeep Pednekar always bounce. On bouncing of cheques Pednekar offers some advance and promises to pay the balance later. Mr. Rane sarcastically commented that, therefore take whatever you receive from him....'

The Petitioner submits that as a matter of fact Mr. Narayan Rane, Shivsena Leader, former Chief Minister of Maharashtra delivered the above referred speech with expressed or implied consent of Respondent No. 1. By the said speech the Respondent No. 1 has indulged in vices propaganda against the Petitioner amounting to corrupt practice so as to prejudice the voters against the petitioners. When Shri. Rane stated that "it was not a Dagdi Chawl" it was clearly insulated that the Petitioner was a rouge and a bad person who could not be trusted. Subsequent sentences correctly reproduced in the news paper known as Sindhu Durg

make it clear that respondent no. 1 therefore, Mr. Rane indulged in Corrector Assassination of the petitioner as a result where of the petitioner suffered and voter were considerably prejudiced. The petitioner respectfully submits that the above referred action of respondent no. 1 amounts to corrupt practice on ground of which the election of respondent no. 1 is liable to be set aside. Since the public opinion was clearly in favour of the Petitioner the Respondent No.1 through Mr. Rane resorted to such unfair, dishonest, incorrect and baseless personal propaganda, to disrepute the Petitioner and to tarnish his image by wrongly connecting him with Dagdi Chawl and/or falsely suggesting that he has sloppy business dealings or that he doesn't keep his commitments, as alleged. All the baseless references made by Mr. Rane in his speech in the meeting on 4th October, 2004 are preparatory to the illegal propaganda carried out by the Respondent on the day of polling i.e. on the 13th day of October, 2004 by distribution of the leaflets and publication and distribution of the posters, copies whereof of the translation are annexed hereto as Exhibits I and J. Hereto annexed and marked as 'Exhibit N and Exhibit O' are the translation of the copy of the news items as appeared in Sindhudurg Ratnagiri Times and Tarun Bharat, dailies on 5/10/04. Hereto annexed and marked as "Exhibit OO" is the affidavit of a voter present at the said public meeting. The Petitioner craves leave to refer to and rely upon the video cassette of the said public meeting as and when produced."

60. The substance of the case made out herein is with reference to the speech made by Shri

Narayan Rane, leader of opposition in the legislative assembly (Shivsena-BJP at the relevant time). It is the case of the Petitioner that the meeting on 4th October 2004 was organised by Respondent No.1 which was attended by several speakers amongst others, Narayan Rane. The Respondent No.1 addressed the said meeting which was followed by other speakers. The Petitioner candidly states that Mr.Narayan Rane spoke at the last. Indeed, it is mentioned that the speeches made by all the dignitaries on the dais including Narayan Rane were delivered with the consent of and in accordance with systematic campaign designed by Respondent No.1. Merely mentioning that the utterances made by Rane was with the consent of Respondent No.1 is not enough as observed in **Azhar Hussain's case (supra)** para 31, to which reference is already made earlier. The material facts to allege consent would require the Petitioner to spell out to whom the returned candidate gave consent, in what manner, how and when and in whose presence the consent was given. None of these material facts are mentioned in the Petition. In the present case, the Petitioner having conceded

that Rane spoke at the last, it was necessary for the Petitioner to also state whether Rane made offending utterances with prior consent of the Respondent No.1. That was obligatory because Narayan Rane happened to be the leader of the party and Respondent No.1 was only a candidate of the party. Complete material facts regarding consent are not forthcoming in the Petition. In the Petition, essentially, the allegation of corrupt practice is focussed on account of two utterances by Mr.Rane. Firstly, he stated that the Petitioner was educated and cultured person and labelled him as goonda of Dagdi Chawl, the infamous den of the alleged underworld person Mr.Arun Gavali of Mumbai. Secondly, Rane made damaging, defamatory and slanderous remarks against the Petitioner which are totally false to the knowledge of Rane and Respondent No.1. In that, Rane referred the Petitioner as an extortionist and cautioned the audience to vote against the Petitioner or else, it will have severe effect on the tranquillity and peace of Deogad area. The extracts of the speeches as appeared in the two newspapers Singhudurg Ratnagiri Times and Tarun Bharat have then been

reproduced. Insofar as the subject allegation is concerned, what are the remarks which are false to the knowledge of Rane and Respondent No.1 have not been spelt out. It is also not stated as to whether Mr.Rane as well as Respondent No.1 believed the statement of fact to be false or did not believe it to be true and the basis for such assertion. Besides, there is no allegation that on account of those utterances, the result of the election insofar as the Respondent No.1 is concerned has been materially affected. Assuming that the utterances of Rane would result in damaging the personal character or conduct of the Petitioner, however, so long as it is not alleged that on account of said utterances, the prospects of election result insofar as the Respondent No.1, the returned candidate is concerned, has been materially affected. It is well established that to invoke Section 123(4) the statement of fact or publication which is false, should be one which is reasonably calculated to prejudice the prospects of the concerned candidate (Petitioner). Under Section 100(1)(d) to declare the election void on the ground of corrupt practice committed by any

other person, the requirement of law is that it should be further stated that the result of the election insofar as it concerns the returned candidate (Respondent No.1) has been materially affected by such corrupt practice. Interestingly, after quoting the utterances appearing in Sindhudurg Ratnagiri Times, it is then stated by the Petitioner that the election agent of Respondent No.1 repeatedly indulged in conversing and misleading the voters by indulging in propaganda to the effect that the voters will receive a shock if the button at serial no.2 was pressed. This allegation perhaps ought to have been part of Para 19. In other words, this assertion is out of place in the scheme of allegations contained in Para 27. In any case, relevant material fact as to when, how, the election agent of Respondent No.1 indulged in alleged corrupt practice and the persons or place and time where the same happened is not spelt out. That material fact is lacking. Besides, the source of information of this allegation is also not disclosed. After quoting the extracts from Tarun Bharat, the Petitioner asserts that Mr.Rane

delivered the speech with express or implied consent of Respondent No.1. An attempt is made to explain as to how the utterances amounted to innuendo. It is then stated that utterances of Rane amounted to character assassination of the Petitioner, as a result whereof, Petitioner suffered and voters were considerably prejudiced. Even accepting that part of the assertion as it is, it is short of saying that all those utterances were calculated to prejudice the prospects of the Petitioner's election.

61. The Petitioner has then annexed translation of the news item appearing in Sindhudurg Ratnagiri Times and Tarun Bharat. However, has not annexed the original news item or produced along with the petition. Besides, at the end in Para 27, the Petitioner craves leave to and rely upon video cassette of the public meeting as and when produced. I shall deal with these aspect a little later while considering issue No.1.

62. Insofar as Para 27 of the Petition is concerned, I have no difficulty in taking the view

that the statements made therein lack complete material facts to disclose cause of action to peruse the ground of corrupt practice within the meaning of Section 123(4) of the Act. As a consequence, the Petition will have to be dismissed at the threshold in exercise of powers under Section 86(1) and Order VII Rule 11 of the Code. In any case, the subject pleadings will have to be strike off being unnecessary, frivolous and vexatious, which may tend to prejudice, embarrass or delay the fair trial.

63. The next Paragraph 28 of the Petition reads thus:

> "28. The Petitioner submits that the respondent no.1 has also violated the provisions of the Act and or orders and directions issued or passed by the Election Commission from time to time regarding maintaining and submitting accounts of the expenditure of the said election. The Petitioner craves leave to refer to and rely upon the accounts submitted or filed by the Respondent NO. 1 as and when produced."

64. No mention is made in this Paragraph as to

what breach has been committed by the Respondent No.1 and in what manner and how the same affects the election prospects of the Petitioner or has materially affected the result of the election of the Respondent No.1. The Petitioner then craves leave to refer to and rely upon the accounts submitted or filed by the Respondent No.1 without giving the contents of the accounts. If it is so, the subject account ought to form integral part of the Petition and failing to annexe the same, certain consequences will follow, which will have to be considered while examining Issue No.1. In the circumstances, even this Paragraph lacks material facts to disclose the cause of action as a result, the Petition should be thrown out at the threshold in exercise of powers under Section 86(1) and Order VII Rule 11 of the Code. The subject pleadings will have to be strike off being unnecessary, frivolous and vexatious, which may tend to prejudice, embarrass or delay the fair trial.

65. I have already adverted to paragraphs 29 to 34 of the Petition in the earlier part of this

Judgment. The contents whereof are general statements, more or less, reproduction of the provisions of law. For the reasons I have already recorded, the effective portion of the petition will have to be struck off, in which case, no issue will survive for trial of the Petition. If it is so, the only course for this Court is to dismiss the Petition at the threshold.

66. That takes me to the issue No.1. Insofar as Issue No.1 is concerned, according to the Respondent No.1, the Petitioner has made reference to news report in Paragraph 19 of the Petition. It is the case of the Respondent No.1 that the contents of the newspaper reports are not mentioned in the election petition. In that case, the newspaper report ought to become integral part of the Petition and failure to annexe the said news report will render the Petition as incomplete and not a true copy requiring dismissal at the threshold. In support of this submission, reliance is placed on the decisions of the Apex Court in **M.Karunanidhi vs. H.V.Handa & Ors. reported in AIR 1983 SC 558, U.S.Sasidharan vs. K.Karunakaran**

& Anr. reported in AIR 1990 SC 924 and Mulayam Singh Yadav vs. Dharampal Yadav & Ors. reported in AIR 2001 SC 2565. The Apex Court has consistently held that Petition must set forth material facts to constitute corrupt practice. If material facts or particulars of the corrupt practice are contained in a document, then the election petitioner, without pleading the material facts or particulars of corrupt practice, may refer to the document. When such a reference is made in the election petition, it is obligatory to supply a copy of the document along with the Petition, as the document becomes incorporated in the election petition by reference. Failure to do so, the election petition is required to be dismissed under Section 86(1) read with Section 81(3) of the Act.

67. Counsel for the Petitioner, however, relied on the decision of the Apex Court in the case of **Sahodrabai Rai vs. Ram Singh Aharwar reported in AIR 1968 SC 1079**. This decision has been referred to in the subsequent Judgments of the Supreme Court which have been pressed into service by the Respondent No.1 and the principle stated

therein has been explained by the Apex Court.

68. I have already referred to the consistent view of the Apex Court on the point in issue. The question is: whether the newspaper report referred to in Para 19 is relied by the Petitioner as evidence in support of the case made out in Para 19. In Para 19, we have already seen that the Petitioner asserts that fraud was played by the Respondent No.1 causing undue influence on the voters. In the first part of Para 19, it is only mentioned that the false campaign was carried out by the Respondent No.1 and his election agents, in the areas where the Petitioner was likely to receive good response. No other details have been mentioned in the said paragraph. I have already dealt with those aspects earlier in detail. As the Petitioner was relying on the newspaper reports without mentioning the complete contents thereof, albeit in addition to the statement supporting the above position on the basis of affidavits of such voters, it presupposes that the newspaper reports would become integral part of the election petition. This is so because the election petition

does not indicate complete material facts. The newspaper reports on the other hand may provide the requisite details, which, however, are not annexed. In that sense, the newspaper reports referred to in Para 19 will not only be a piece of evidence to support the evidence but have become integral part of the Petition, due to incorporation by reference of the contents thereof. Non-annexing of newspaper reports, therefore, will render the Petition as presented as not true copy thereof and therefore liable to be dismissed in limine under Section 86(1) read with Section 81(3) of the Act.

69. The next document which the Respondent No.1 submits has not been annexed, though integral part of the Petition, which is referred to as offending leaflets distributed in the Constituency in Paragraph 21(e). The incoherent way in which paragraph 21(e) is drafted is already adverted to. Only two sentences have been mentioned therein. No other details are mentioned. The details of the leaflet are also not stated. It is not mentioned as to reference is made to which leaflet, whether it is already annexed to the Petition and so on.

Reliance is placed on Exhibit G, which is copy of the complaint by Chandrakant Jathar. It mentions distribution of leaflets wherein, party to which he belonged has been mentioned as opposition (adversary). The original of that leaflet is not annexed nor the translation. It is then mentioned in the complaint that the leaflet indirectly tantamount to defamation of his party's candidate. Besides, the same is in violation of breach of code of conduct of being distributed on the polling day and legal action must be taken against Shri Atul Kalsekar. Besides, saying this, no other details of the leaflet is mentioned in the complaint Exhibit G. By reference to the leaflet and alleging that the same resulted in character assassination of the Petitioner and therefore corrupt practice, it became integral part of the election petition. Non-annexing the said leaflet is fatal, which will result in consequence of dismissal of election petition under Section 86(1) read with Section 81(3) of the Act.

70. The next grievance of the Respondent No.1 is that only English translation of so-called

poster and leaflet are annexed as Exhibits I and J, the original in vernacular language of the said documents are not filed on record. The complete contents of the said poster and leaflets is not stated in the election petition. While dealing with issue No.2, I have already addressed to some extent about the discrepancy in the description of documents as poster and leaflet. The document which is described as leaflet, English translation thereof is at page 133. Corresponding document in Marathi is part of Exhibits JA, JB and JC at pages 137, 141 and 143 respectively. However, this position is demonstrated by the Counsel for the Petitioner only during the course of arguments. If the pleadings were to be read as it is, I am in agreement with the Counsel for the Respondent No.1 that it is replete with confusion, inasmuch as the document which is described as poster Exhibit I, original whereof is not at all placed on record. It is not expected of the Respondent No.1 to wade through the paper book to collate the documents to assume that leaflet Exhibit J English translation of that document corresponds with the same document which is part of Exhibits JA, JB and JC at pages

137, 141 and 143 respectively. Besides, in the latter part of paragraph 22, the Petitioner asserts that the poster and the leaflet appears to have been printed at Ameya Printing Press at Jamsande, District Deogad and published by one Atul Kalsekar. Whereas, in earlier part of Para 22, it is stated that Respondent No.1 has printed posters and leaflets of the same heading. After referring to Exhibits JA, JB and JC in Paragraph 22, it is asserted that the posters were pasted in all important and prominent places in the said constituency and the leaflets were openly and freely distributed around all the 176 booths of the Constituency. This presupposes that two different types of documents were in circulation. It was expected of the Petitioner to place on record the original as well as translation of the respective documents along with the Petition. This is because the Petition does not clearly spell out the complete contents of the respective documents and make distinction of the contents therein. Viewed in this perspective, it is possible to accept the argument that the Petition as filed is not a true copy of the petition and therefore, is liable to be

dismissed under Section 86(1) read with Section 81(3) of the Act.

71. Similarly, in the penultimate sentence in Paragraph 23, it is stated that Respondent No.1 had printed and published the said poster without printing the name and address of the printer and the publisher thereof. The same reasoning, as referred to above, will have to be adopted with reference to this document. In Paragraph 23, the Petitioner also refers to two successive complaints filed with the Police Stations in regard to separate incidents. The contents of the complaint are not elaborated. Only brief reference is made to the nature of events without giving details or material facts. As the contents of the complaint are not set out in the Petition, the said complaints which are relied by the Petitioner in support of the allegation contained in the earlier part of Para 23, the same became integral part of the Petition. Having failed to annexe the said complaints, the consequences of dismissal of election petition by virtue of Section 86(1) read with Section 81(3) will follow.

72. Similarly, in Para 24, the petitioner makes reference to some offence, which amounts to commission of corrupt practice. It is also stated that the Petitioner has filed complaint in respect of those cases. The Petitioner then craves leave to refer to and rely upon the said complaint. Once again, the contents of the complaint are not set out in the Petition. For the same reason, it will have to be held that the Petition as filed, is not a true copy on account of failure to annexe the complaints referred to in paragraph 24 of the Petition.

73. That takes me to the documents referred to in paragraph 27 of the petition. Reference is made to the two newspaper reports. The Petitioner has already extracted the relevant portions from the concerned reports and also annexed translated copies thereof as Exhibits N and O to the Petition. The grievance of the Respondent No.1 is that the original in Marathi has not been produced, for which reason, petition is not a true copy. It is not possible to accept this contention. As

mentioned earlier, the relevant extracts from the concerned news items have been already extracted in the Petition. In such a case, the newspaper report will only have to be treated as relevant for the purposes of evidence and not become integral part of the Petition. As the Petitioner has annexed English translation of the respective newspaper reports, the originals thereof can always be produced during the trial of the Petition.

74. There is one more document referred to in Paragraph 27 of the Petition, the video cassette of the public meeting dated 4th October 2005. In my opinion, the Petitioner is justified in contending that the same has been referred to only with a view to rely on the same at the time of evidence. The contents of the relevant utterances of the speaker is already extracted in para 27. To support that position, the said document (video cassette) will be used in evidence. Viewed in this perspective, non-filing of video cassette along with the Petition will not result in dismissal of the election petition under Section 86(1) read with Section 81(3) of the Act.

75. The last item that requires to be considered is document referred to in Paragraph 28. The Petitioner relying on the accounts submitted or filed by the Respondent No.1 asserts that the same are in violation of the provisions of the Act and/or orders and directions issued or passed by the Election Commissioner from time to time regarding maintaining and submitting the accounts of the expenditure on the said election. The contents of the accounts or the relevant aspects thereof on the basis of which the allegation is made in Para 21 is not spelt out. In that view of the matter, the statements of accounts on which the Petitioner intends to rely would become integral part of the Petition. Failure to annexe the said document is fatal and will entail in dismissal of the election petition under Section 86(1) read with Section 81(3) of the Act.

76. That takes me to the last aspect as to the nature of order to be passed. For the reasons already recorded above, the Election Petition will

have to be dismissed at the threshold under Section 86(1) read with Section 81(3) and Section 86(1) read with Section 83(1)(a) and 81(3) of the Act read with Order VII Rule 11 of the Code, answering both the preliminary issues against the Petitioner.

77. The next question is the quantum of cost to be imposed. Counsel for the Respondent No.1 was called upon to address on this aspect. He submitted that he had no submissions to offer and will leave it to the Court to pass appropriate order. He stated that Respondent No.1 is not keen on receiving cost. Even so, for the reasons which are recorded in the earlier part of this Judgment, it is obvious that the present Election Petition is unnecessary, frivolous and vexatious. That is the finding reached by me. If it is so, the Petitioner will have to be saddled with cost quantified at Rs.7500/- (Rupees Seven Thousand Five Hundred) to be paid to the High Court Legal Services Committee (as Respondent No.1 is not interested in cost) within eight weeks from today. Accordingly, Petition dismissed with cost.

A.M.KHANWILKAR, J.